



भारत का राजपत्र

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No. 42] NEW DELHI, OCTOBER 11—OCTOBER 17, 2015, SATURDAY/ASVINA 19—ASVINA 25, 1937

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii) PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

(भारतीय मानक ब्यूरो)

नई दिल्ली, 12 अक्टूबर, 2015

का० आ० 1977.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपविनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे स्वीकृत कर दिए गए हैं:

क्रम संख्या	लाइसेंस संख्या	स्वीकृति करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भामा सं०/भाग/खंड/वर्ष
1	2	3	4	5	6
1.	7800005809	07/07/2015	सनिरंग इनवेस्टमेंट एंड ट्रेडिंग कंपनी लिमिटेड गाला सं० जी-4, तल मंजिल, कृष्णा कॉम्पलेक्स अग्रवाल पैकर्स एंड मूवर्स, दापोडा अंजुर रोड, मानस पेट्रोल पम्प के नजदीक भिवंडी - 421302, जिला - ठाणे	प्लेन कॉपीयर पेपर	भा मा 14490: 1997

1	2	3	4	5	6
2.	7800005910	07/07/2015	सनिरंग इनवेस्टमेंट एंड ट्रेडिंग कंपनी लिमिटेड गाला सं० जी-4, तल मंजिल, कृष्णा कॉम्पलेक्स अग्रवाल पैकर्स एंव मूवर्स, दापोडा अंजुर रोड, मानस पेट्रोल पम्प के नजदीक भिवांडी - 421302, जिला -ठाणे,	पेपर कम्प्युटर, टाइप ए ईको मार्क सहित	भा मा 12766: 1997
3.	7800006011	07/07/2015	दर्शक इंडस्ट्रीज 16 सिंह कम्पाउण्ड जोगेश्वरी (पश्चिम) मुंबई- 400102	250 वोल्ट्स और 16 एम्पीअर्स तक रेडित धारा के प्लग और सॉकेट आउटलेट्स	भा मा 1293: 2005
4.	7800006112	13/07/2015	तिरुपति फैंब्रीकेटर्स प्रा० लिमिटेड जे-22, एमआयडीसी जिला: जलगांव -425001	सिंचाई उपकरण-मीडिया फ़िल्टर	भा मा 14606: 1998
5.	7800006213	13/07/2015	तिरुपति फैंब्रीकेटर्स प्रा० लिमिटेड जे-22, एमआयडीसी जिला: जलगांव -425001	सिंचाई उपकरण-हाईड्रोसाइक्लोन फ़िल्टर	भा मा 14743: 1999
6.	7800006415	16/07/2015	जी एम मोड्युलर प्रा० लिमिटेड (यूनिट सं० 2) सर्वे सं० 15/1, बिल्डिंग सं० 1, के०टी० इण्डो पार्क, सेक्टर 2, गौराई पाडा, वालिव, वसई पूर्व, जिला पालघर-401208	250 वोल्ट्स और 16 एम्पीअर्स तक रेडित धारा के प्लग और सॉकेट आउटलेट्स,	भा मा 1293: 2005
7.	7800006314	20/07/2015	मास्टर फ्लेक्स केबल्स प्लॉट सं० 23, सर्वे सं० 824 अंड 825 हिस्सा सं० 152, दिवान उद्योग नगर, सुंदरम सेंट्रल स्कूल के नजदीक, माहिम रोड पालघर- पश्चिम जिला- पालघर - 401404	1100 वोल्ट तक कार्यकारी वोल्टता के लिए पी वी सी रोधित (भारी ड्यूटी) विद्युत केबल	भा मा 1554 (भाग 1): 1988
8.	7800006516	23/07/2015	पीएनएस इलैक्ट्रिकल सोल्यूशन प्रा० लि० क्रम सं० 6, प्लॉट सं० 13, सपना इंडस्ट्रियल, इस्टेट, फेस 2, सरावली गांव, किलबर्न के पीछे, भिवांडी-302421- जिला: ठाणे	घरेलू और समान प्रयोजनों के लिए स्विचें	भा मा 3854 : 1997
9.	7800006609	24/07/2015	बेडमुथा इंडस्ट्रीज प्रा० लि० प्लॉट सं० ई-1, नरदाना एमआइडीसी फेज 2, वघाडी खुर्द शिंध खेड़ा धुले-424054	शिरोपरि प्रेषण प्रयोजनों के लिए एल्यूमिनियम चालक-भाग -2, एल्यूमिनियम चालक, जस्तीकृत इस्पात प्रबलित	भा मा 398 भाग 2: 1996

[सं० केन्द्रीय प्रमाणन विभाग/13:11]
टी० कलैवाणन, प्रमुख (एमयूबीओ- ईईई)

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION**(Department of Consumer Affairs)****(BUREAU OF INDIAN STANDARDS)**

New Delhi, the 12th October, 2015

S.O. 1977.—In pursance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies the **grant of licences** particulars of which are given in the following schedule:

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address (factory) of the party	Product	IS NO./Part/Sec Year
1	2	3	4	5	6
1	7800005809	07/07/2015	Sanirang Investment & Trading Co. Ltd. Gala No. G-4. ground floor, Krishna Complex, behind Agrawal packers & movers, Dapoda Anjur Road, Near Manas Petrol Pump, Bhiwandi - 421302, Distt: Thane	Plain copier paper	IS 14490:1997
2	7800005910	07/07/2015	Sanirang Investment & Trading Co. Ltd. Gala No. G-4. ground floor, Krishna Complex, behind Agrawal packers & movers, Dapoda Anjur Road, Near Manas Petrol Pump, Bhiwandi - 421302, Distt: Thane	Paper Computer	IS 127660:1997
3	7800006011	07/07/2015	Darshak Industries 16, Singh compound, Jogeshwari (W) Mumbai-400102	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	IS 1293:2005
4	7800006112	13/07/2015	Tirupati Fabricators Pvt., Ltd. J-22, MIDC Distt: Jalgaon Maharashtra-425001	Irrigation equipment-media filters	IS 14606:1998
5	7800006213	13/07/2015	Tirupati Fabricators Pvt., Ltd. J-22, MIDC Distt: Jalgaon Maharashtra-425001	Irrigation equipment Hydrocyclone filters	IS 14743:1999
6	7800006415	16/07/2015	G.M. Modular Pvt. Ltd. (Unit-II) Survey No. 15/1, Bldg. No. 1, K.T. Indl Park, Sector II, Gaurai Pada, Valiv, Vasai (E) - 401208 Distt: Thane Maharashtra	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	IS 1293:2005
7	7800006314	20/07/2015	Master Flex Cables Plot No. 23, Survey No. 824/825, Hissa No. 12 Diwan Udyog Nagar, Near Sundaram Central School, Mahim Road Palghar (W) -401404 Distt: Thane Maharashtra	Pvc insulated (heavy duty) electric cables: part 1 for working voltages upto and including 1100 V	IS 1554: Part 1: 1998

1	2	3	4	5	6
8	7800006516	23/07/2015	PNS Electric Solution Pvt. Ltd. Sr. No. 6, Plot No. 13, Sapna Indl Estate, Phase 2, Sravali Village, Behind Kilburn, Bhiwandi-421302 Distt: Thane Maharashtra	Switches for domestic and similar purposes	IS 3854: 1997
9	7800006609	24/07/2015	Bedmutha Industries Ltd. Plot No. E, Nardana, MIDC, Phase-2, Waghadi Khurd, Shinde Kheda Distt: Dhule Maharashtra-424054	Aluminium conductors for overhead transmission purposes: Part 2 Aluminium conductors, galvanized steel reinforced	IS 398: Part 2: 1996

[No. CMD/13:11]

T. KALAIVANAN, Head (MUBO-EEE)

नई दिल्ली, 12 अक्टूबर, 2015

का० आ० 1978.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 5 के उपविनियम (6) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिन लाइसेंसों के विवरण नीचे अनुसूची में दिए गए हैं, वे रद्द कर दिए गए हैं:—

अनुसूची

क्रम संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/ प्रकम सम्बद्ध भारतीय मानक का शीर्षक	रद्द करने की तिथि
1	3950773	निशा प्रोडक्ट्स 86, मेहता इण्डस्ट्रीयल इस्टेट, लिबर्टी गार्डन 'X' रोड सं० 3, मालाड पश्चिम मुंबई-400064	भा०मा० 3854: 1997 घरेलू और सामान प्रयोजनों के लिए स्विचे	16/07/2015

[सं० केंद्रीय प्रमाणन विभाग/13:13]

टी० कलैवाणन, प्रमुख (एम यू बी ओ-ईईईई)

New Delhi, the 12th October, 2015

S.O. 1978.—In pursuance of sub-regulation (6) of regulation 5 of the Bureau of Indian Standards (Certification) Regulations, 1988, the Bureau of Indian Standards, hereby notifies that the licences particulars of which are given in the following schedule have been cancelled with effect from the date indicated against each:

SCHEDULE

Sl.	Licence No.	Name and address of the licensee	Article/process with relevant Indian standard covered by the Licence	Date of cancellation
1.	3950773	Nisha Products 86, Mehta Indl. Estate, Liberty Garden X Road No. 3, Malad West Mumbai-400064	IS 3854: 1997 Switches for domestic and similar purposes	16/07/2015

[No. CMD/13:13]

T. KALAIVANAN, Head (MUBO-EEE)

वित्त मंत्रालय

(राजस्व विभाग)

(कार्यालय आयुक्त, केन्द्रीय उत्पाद शुल्क आयुक्तालय)

उदयपुर, 9 अक्टूबर, 2015

सीमा शुल्क

सं० 01/सीमा शुल्क (एनटी.) यूडीआर/2015

का० आ० 1979.—भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, नई दिल्ली की अधिसूचना संख्या 33/94 सीमा शुल्क (एनटी.) दिनांक प्रथम जुलाई, 1994 के अंतर्गत प्रदत्त शक्तियों का प्रयोग करते हुए मै० सी० के० जैन, आयुक्त, केन्द्रीय उत्पाद शुल्क, उदयपुर एतद्वारा राजस्थान राज्य के राजसमन्द जिला, नाथद्वारा तहसील में स्थित गांव माण्डियाणा को सीमा शुल्क अधिनियम 1962 की धारा 9 (1962 की 52) के अंतर्गत शतप्रतिशत ई०ओ०यू० स्थापित करने के उद्देश्य से भण्डारण स्टेशन (वेयर हाउसिंग स्टेशन) घोषित करता हूँ।

[फा. सी. सं० पंचम(ईओयू) 30/टीईसीएच/यूडीआर/02/2015]

सी०के० जैन, आयुक्त

MINISTRY OF FINANCE

(Department of Revenue)

(OFFICE OF THE COMMISSIONER, CENTRAL EXCISE)

Udaipur, the 9th October, 2015

CUSTOMS

No. 01/CUS (NT)/UDR/2015

S.O. 1979.—In exercise of the power conferred by Notification No. 33/94 customs (NT) dated 1st July, 1994,

of the government of India, Ministry of Finance, Department of Revenue, New Delhi, I.C.K. Jain, Commissioner of Central excise, Udaipur hereby Declare Village-Mandiyana, Tehsil-Nathdwara, District-Rajsamand, in the State of Rajasthan to be a Warehousing Station under section 9 of the customs Act, 1962 (52 of 1962) for the Limited purpose of setting up of 100% export oriented unit.

[F. C. No.V (EOU) 30/TECH/UDR/02/2015]

C.K. JAIN, Commissioner

वाणिज्य और उद्योग मंत्रालय

(औद्योगिक नीति एवं संवर्धन विभाग)

नई दिल्ली, 9 अक्टूबर, 2015

का०आ० 1980.—सरकारी संपत्ति (अनाधिकृत अधिभोगियों की बेदखली) अधिनियम 1971 (1971 की 40), की धारा 20 के साथ पठित धारा 3 द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केंद्र सरकार एतद्वारा तत्कालीन निर्माण, आवास तथा आपूर्ति मंत्रालय की संख्या का०आ० 307 दिनांक 28 जनवरी, 1959 की भारत सरकार की अधिसूचना में सरकार के राजपत्रित अधिकारी होने के नाते, निम्नलिखित प्रयोजनों के लिए संपदा अधिकार होने के लिए निम्नलिखित संशोधन करती है नामतः—

2. उक्त अधिसूचना में, तालिका में—

(क) क्रम संख्या 5 में कालम 1 और 2 की प्रविष्टियों के लिए, निम्नलिखित प्रतिस्थापित किया जाएगा, नामतः—

1	2
5. सहायक नमक आयुक्त, कोलकाता अथवा नियमित सहायक नमक आयुक्त, कोलकाता की अनुपस्थिति में अधीक्षक, हुम्मा नमक सर्कल	पश्चिम बंगाल राज्य में अवस्थित नमक विभाग के प्रशासनिक नियंत्रण तथा उड़ीसा तथा आंध्र प्रदेश राज्य के हुम्मा नमक सर्कल के संबंधित नमक अधीक्षक के क्षेत्राधिकार की स्थानीय सीमाओं के अंतर्गत परिसर।

(ख) क्रम संख्या 26 के भाग (क) तथा भाग (ख) में कालम 1 तथा 2 की प्रविष्टियों के स्थान पर निम्नलिखित प्रतिस्थापित किया जाएगा, नामतः—

1	2
26(क) उप नमक आयुक्त (मुख्यालय), जयपुर अथवा मुख्यालय कार्यालय, जयपुर में तैनात सहायक नमक आयुक्त (प्रशासन)	राजस्थान, हरियाणा तथा हिमाचल प्रदेश राज्यों में उनके संबंधित क्षेत्राधिकार की स्थानीय सीमाओं में अवस्थित नमक विभाग के प्रशासनिक नियंत्रण के अंतर्गत आने वाले परिसर
26 (ख) (i) उप नमक आयुक्त, चेन्नई अथवा नियमित उप नमक आयुक्त, चेन्नई की अनुपस्थिति में आंध्र प्रदेश और तमिलनाडु राज्यों में उनके संबंधित क्षेत्राधिकार के संबंध में काकीनाडा प्रभाग में तैनात सहायक नमक आयुक्त; और	(i) आंध्र प्रदेश तथा तमिलनाडु राज्यों में उनके संबंधित क्षेत्राधिकार की स्थानीय सीमाओं में अवस्थित नमक विभाग के अंतर्गत आने वाले परिसर
(ख) नियमित उप नमक आयुक्त, चेन्नई की अनुपस्थिति में तमिलनाडु राज्य में उनके संबंधित क्षेत्राधिकार के संबंध में तुतीकोरिन प्रभाग में तैनात सहायक नमक आयुक्त	
(ii) उप नमक आयुक्त अहमदाबाद अथवा (क) नियमित उप नमक आयुक्त, अहमदाबाद की अनुपस्थिति में उनके संबंधित क्षेत्राधिकार के संबंध में जामनगर प्रभाग में तैनात सहायक नमक आयुक्त; और	(ii) गुजरात, दीव और दमण राज्य में उनके संबंधित क्षेत्राधिकार की स्थानीय सीमाओं में अवस्थित नमक विभाग के प्रशासनिक नियंत्रणाधीन परिसर
(ख) नियमित उप नमक आयुक्त, अहमदाबाद की अनुपस्थिति में उनके संबंधित क्षेत्राधिकार के संबंध में गांधीधाम, गुजरात में तैनात सहायक नमक आयुक्त	

[सं 12016/1/2009-नमक]

नरेंद्र कुमार, उप सचिव

टिप्पणी: प्रमुख अधिसूचना दिनांक 28.01.1959 के संख्या कां०आ० 307 के माध्यम से जारी की गई थी और इसमें 26.02.2013 को सं० कां० आ० 550 के द्वारा अंतिम रूप से संशोधित किया गया था।

MINISTRY OF COMMERCE AND INDUSTRY
(Department of Industrial Policy and Promotion)

New Delhi, the 9th October, 2015

S.O. 1980.—In exercise of the powers conferred by section 3 read with section 20 of the Public Premises (Eviction of Unauthorised Occupants) Act 1971 (40 of 1971), the Central Government hereby makes the following amendments to the Notification of the Government of India in the erstwhile Ministry of Works, Housing and Supply number S.O. 307 dated the 28th January, 1959, being Gazetted Officers of Government, to be Estate Officers for the purpose, namely:—

2. In the said notification, in the Table,—

(A) against serial number 5, for entries in columns 1 and 2, the following shall be substituted, namely:—

1	2
5. Assistant Salt Commissioner, Kolkata or Superintendent of Salt, Humma Salt Circle in the absence of regular Assistant Salt Commissioner, Kolkata	Premises under the administrative control of the Salt Department situated in the State of West Bengal and in the local limits of the respective jurisdiction of Superintendent of Salt, Humma Salt Circle in the States of Odisha and Andhra Pradesh.

(B) against part (a) and part (b) of serial number 26, for entries in columns 1 and 2, the following shall be substituted, namely:—

(1)	(2)
26(a) Deputy Salt Commissioner (Headquarters), Jaipur or Assistant Salt Commissioner (Administration), posted in the Headquarters Office, Jaipur	Premises under the administrative Control of the Salt Department situated in the local limits of their respective jurisdiction in the State of Rajasthan, Haryana and Himachal Pradesh
26(b) (i) Deputy Salt Commissioner, Chennai or (a) Assistant Salt Commissioner posted in Kakinda Division in respect of his respective jurisdiction in the State of Andhra Pradesh and Tamil Nadu in the absence of regular Deputy Salt Commissioner, Chennai; and	(i) Premises under the administrative control of Salt Department situated in the local limits of their respective jurisdiction in the State of Andhra Pradesh and Tamil Nadu.
(b) Assistant Salt Commissioner posted in Tuticorin Division in respect of his respective jurisdiction in the State of Tamil Nadu in the absence of regular Deputy Salt Commissioner, Chennai	
(ii) Deputy Salt Commissioner, Ahmedabad or (a) Assistant Salt Commissioner posted in Jamnagar Division in respect of his respective jurisdiction in the absence of regular Deputy Salt Commissioner, Ahmedabad; and	(ii) Premises under the administrative control of the Salt Department situated in the local limits of their respective jurisdiction in the State of Gujarat, Diu and Daman.
(b) Assistant Salt Commissioner posted in Gandhidham. Gujarat in respect of his respective jurisdiction in the absence of regular Deputy Salt Commissioner, Ahmedabad.	

[No. 12016/1/2009-Salt]

NARENDER KUMAR, Dy. Secy.

Note:— The principal notification was issued *vide* No. S.O. 307 dated 28.01.1959 and was last amended *vide* No. S.O. 550 dated 26.02.2013.

श्रम एवं रोजगार मंत्रालय

शुद्धि-पत्र

नई दिल्ली, 28 सितम्बर, 2015

का०आ० 1981.—केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय सं० 1, धनबाद द्वारा संदर्भ संख्या 179/1997, दिनांक 01/05/2015 के अंतर्गत पारित पंचांट, की अधिसूचना दिनांक 21/05/2015 को आधिकारिक राजपत्र में प्रकाशित किया गया था।

2 उपरोक्त पंचांट के पृष्ठ संख्या 2, अंतिम पैरा 10 की द्वितीय पंक्ति में दर्ज कर्मकार का नाम प्रदीप कुमार के स्थान पर राजेन्द्र प्रसाद पढ़ा जा सकता है।

[सं० एल-22012/242/1992-आई आर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

MINISTRY OF LABOUR AND EMPLOYMENT
CORRIGENDUM

New Delhi, the 28th September, 2015

S.O. 1981.—The Award under Reference No. 179/1997 dated 01.05.2015 passed by CGIT No. 1, Dhanbad was published in the official gazette *vide* Notification dated 21.05.2015.

2. The name of the workman mentioned in the aforesaid Award at page No. 2, last para No. 10 line No. 2 of the Award may be read as Rajendra Prasad in place of Pradeep Kumar.

[No. L-22012/24/1992-IR(C-II)]
RAJENDER SINGH, Section Officer

नई दिल्ली, 8 अक्टूबर, 2015

का०आ० 1982.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार डब्ल्यूसीएल के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ संख्या 64/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 08/10/2015 को प्राप्त हुआ था।

[सं० एल-22012/24/2011-आई आर (सीएम-II)]
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th October, 2015

S.O. 1982.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure in the Industrial Dispute between the management of *WCL Pencha Area Pracey Distt. Chhindwara* and their workman, received by the Central Government on 08/10/2015.

[No. L-22012/24/2011-IR(CM-II)]
RAJENDER SINGH, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR

No. CGIT/LC/R/64/2011

Shri Bharat Singh,
General Secretary.
Samyukta Koyla Mazdoor Sangh,
Eklehra,
Chhindwara

...Workman/Union

Versus

Chief Manager,

WCL Pencha Area

Parasieya, Distt. Chhindwara

...Management

AWARD

Passed on this 4th day of September 2015

1. As per letter dated 24.6.2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section- 10 of I.D. Act, 1947 as per Notification No. L-22012/24/2011-IR (CM-II). The dispute under reference related to:

"Whether the action of the management of M/S Western Coal Fields in terminating the service of Shri Brugnath Tub Loader *w.e.f.* 19.1.2010 is legal and justified? To what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman failed to submit statement of claim. Reference is proceeded without statement of claim of workman on 16.2.2015. 2nd party management filed exparte Written Statement *w.r.t.* the claim under dispute 2nd party submits that workman was posted as Tub at Newton/Ganpati Mines, WCL. Pencha Area. He was habitual absentee. Workman was given ample opportunity to improve his conduct but no improvement was seen. The attendance of workman from 2003 to 2009 was nil. Workman was appointed on 2-8-92. Chargesheet was issued to workman for unauthorized absence on 5-6-09. Workman did not reply to the chargesheet. DE was conducted against workman by Shri N.S. Rao, Enquiry Officer. Management Representative was Mr. Bist. Management Representative and workman were present in enquiry on 18-8-09. Workman admitted charges against him. Secondly enquiry was closed. Showcause notice was issued to workman on 25-9-09 alongwith copy of Enquiry Report. Workman was terminated as per order dated 19-1-2010 for proved misconduct of unauthorized absence.

3. Management also filed affidavit of evidence supporting contentions in Written Statement, copy of documents of enquiry are produced. As workman failed to participate in reference proceeding, I find no reason to disbelieve evidence of management's witnesses. For proved misconduct of unauthorized absence, services of workman are terminated. Therefore I hold that action of the management is legal.

4. In the result, award is passed as under:—

(1) The action of the management of M/s. Western Coal Fields in terminating the service of Shri Brugnath Tub Loader *w.e.f.* 19-1-2010 is proper and legal.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 8 अक्टूबर, 2015

कांआ 1983.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ्सीआई के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 01/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/10/2015 को प्राप्त हुआ था।

[सं एल-22012/7/2005-आई आर (सीएम-II)],
राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th October, 2015

S.O. 1983.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (*Ref. No. 01/2006*) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow* as shown in the Annexure, in the industrial dispute between the management of *Food Corporation of India*, and their workmen, received by the Central Government on 08/10/2015.

[No. L-22012/7/2005-IR (CM-II)]
RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

RAKESH KUMAR

PRESIDING OFFICER

I.D. No. 01/2006

Ref. No. L-22012/7/2005-IR (CM-II) dated 31.01.2006

BETWEEN

The State Secretary
Bhartiya Khadya Nigam Karmchari Sangh
DC/3V, Vibhuti Khand, Gomti Nagar
Lucknow (U.P.)

AND

The Sr. Regional Manager
Food Corporation of India
DC/3V Vibhuti Khand, Gomti Nagar
Lucknow (U.P.)

AWARD

1. By order No. L-22012/7/2005-IR (CM-II) dated 31.01.2006 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Secretary, Bhartiya Khadya Nigam Karmchari Sangh, Lucknow (espousing

cause of Sri Mohd. Jafar, Asstt.) and the Sr. Regional Manager, Food Corporation of India, Gomti Nagar, Lucknow for adjudication.

2. The reference under adjudication is:

“Whether the Action of the Management of Food Corporation of India in Imposing Penalties upon Shri Mohd. Jafar, Assistant is Legal and Justified? If not, to what Relief the Workman is Entitled?”

3. The Karmchari Sangh in its claim statement A-7, has stated in brief, that the opposite party served a charge sheet dated 20.02.2004 upon the workman Mohd Jafar under Regulation 60, Staff Regulation 1971, mentioning therein that the storage loss percentage shown during the month June 1999 and August 1999 were not justified, the workman gave reply dated 21.02.2004 which was not considered in accordance with law by the opposite party, and thereafter punishment order dated 24.02.2004 was passed. Relevant provisions of the Staff Regulation have been mentioned in the claim statement.

4. It has further been stated in the claim statement that it is evident from the impugned order dated 24.02.2004 that no reason has been recorded in the impugned order while disagreeing with the reply dated 20.02.2004 of the workman. Hence, it is evidently clear that opposite party has not considered the reply of workman which is against the principle of natural justice. The aforesaid mentioned impugned order dated 24.02.2004 is also violative of regulation 60 (1) (d) of the Staff Regulation as the opposite party has not recorded a finding on each imputation of misconduct or misbehaviour. It has not recorded as to how it has come to conclusion that loss of 129.49.800 Qlts was unjustified while rest has been justified. What were the parameters for assessing storage loss for each factor/reason? It has not given as to why opposite party has not accepted the reasons given by the workman in his reply. It has also not been clarified as to how he has justified the penalty to recovery of Rs. 40000/- against the workman. The impugned penalty affects the retirement benefits of the workman which cannot be passed under regulation 60 of Staff Regulations 1971 in view of regulation 60(2) of the Staff Regulations 1971. Hence, the impugned order suffers from illegalities.

5. It is further stated that the opposite party has not clarified the role of workman and other employee posted in the depot in as such as connected with the charges. Hence, the charges are vague. It is well settled that non recording or reason in the punishment order is violative of natural justice. The opposite party has given IInd charge sheet no. Vig. 4 (1378)/RO-LKO/BLY/STL/2001/940 dated 01.05.2002 alleging the same charges of storage loss during the period 8/98 & 9/98 at Bareilly. The workman has given a detailed reply to the charge sheet dated 01.05.2002 vide letter dated 06.06.2002. This was received by opposite party

on 07.06.2002. The opposite party has not considered the reply of the workman nor any reason has been recorded and passed the impugned Order dated 16.02.2004 imposing a penalty of recovery of Rs. 40672/- without giving any finding on the imputation of misconduct and also not supported the impugned order by any evidence on record and also not given any reason for disagreement with the reply of the workman. Hence, the impugned order is violative of principles of natural justice and also of regulations 60(1) (d) of the Staff Regulations 1971. The impugned order is also violative of regulation 60(2) of the Staff Regulations 1971 as the impugned order effects the retirement benefits. That the impugned order dated 16.02.2004 is liable to be set-aside. The opposite party has given another charge sheet No. Vig.4 (1357)/RO-LKO/BLY/SL/2003 dated 16.02.2004 alleging the similar charges as alleged in earlier charge sheets without giving any detail of the charges. The charges are vague. The workman submitted reply dated 20.02.2004 which has not been considered in accordance with law by opposite party and passed impugned penalty order No. Vig. 4(1357)/RO-LKO/BLY/SL/01/0550 dated 24.02.2004 imposing a penalty of recovery of Rs. 15000/- without considering the reply of the workman. The issues raised by the workman have not been discussed in the impugned order, not given any finding on the imputation of misconduct alleged in the charge sheet as such impugned order dated 24.02.2004 is violative of natural justice as well as regulation 60 (1) (d) of the Staff Regulation. The opposite party has not recorded any reason in the impugned order as to how he has come to conclusion that 288.89.000 Qlts of storage loss was not justified and as to how rest of the loss has been justified. Hence, the impugned order is not speaking. The impugned order is violative of regulation 60(2) as the same effects the retirement benefits of the workman. The opposite party has not clarified the role of workman and other employee posted in the depot in as such as connected with the charges. Hence, the charges are vague.

6. Karmchari Sangh further stated that the opposite party has again issued illegal arbitrary charge sheet No. Vig. 4 (1356)/RO-LKO/BLY/2001/2415 dated 11.01.2002 alleging the same charges of storage losses for 7/98 at Bareilly depot. The workman submitted reply to the charge-sheet *vide* letter dated 12.02.2002 which has not been considered by opposite party in accordance with law and passed illegal arbitrary impugned order dated 03.05.2003 without assigning any reason. The opposite party has also not given any reason for not agreeing with the reply of the workman. The opposite party has imposed penalty of recovery of Rs. 5745/- upon the workman. The impugned order is violative of principles of natural justice. It is also violative of regulation 60 (1) (d) of the Staff Regulations 1971 as no finding to the imputation of misconduct and misbehaviour has been given in the impugned order dated 03.05.2003. The impugned order

dated 03.05.2003 is also violative of regulation 60 (2) of the Staff Regulation 1971 as it effects the retirement benefits of the workman. The workman was to be retired on 28.02.2004 and the charge-sheets dated 20.02.2004 and 16.02.2004 on which the reply were sought after two days and within five days without seeing the record as opposite party had to decide the case prior to the date of retirement. While the allegations pertained to the year 1998-99, the opposite party has not given any reason for inordinate delay in issue of the charge-sheet. Opposite party was waiting for the period of retirement so that they may seek reply without giving time. These proceedings are violative of natural justice.

7. Karmchari Sangh has alleged that all the 4 penalties awarded are erroneous, illegal, arbitrary and violative of natural justice. Request has been made to set aside the impugned penalty dated 24.02.2004, 16.02.2004 another order 24.02.2004 and 03.05.2005, request for refund of the recovered amount along with interest @ 24% per annum has also been made in the claim statement.

8. The management has filed written statement A-33 wherein it has been admitted the Mohd. Jafar, AG II (D) was posted as FSD, C.B. Ganj, Bareilly, where he was custodian of stock of various units, he has been retired from the service of FCI *w.e.f.* 28.02.2004. The disciplinary proceedings under regulation 60 of FCI (Staff) Regulation, 1971 were initiated against for abnormal storage loss. The management has emphasized that the penalty order is well reasoned and all the issues raised by the workman has been considered in the penalty order. The main contentions of the claim statement have been denied by the opposite party and it is stated further that terminal benefits of the workman have not been affected by the punishment order. The disciplinary authority has considered all issues raised by the workman and his reply, and well reasoned order has been passed. The management has prayed that the workman is not entitled for the relief claimed.

9. Thereafter rejoinder A-34 has been filed by the Karmchari Sangh, reiterated the pleas taken in the claim statement, with strong denial of the written statement.

10. The workman has filed certain documents along with list C-8.

11. Sufficient opportunity was provided by my learned predecessor and by me as well, several dates were given, but none appeared on behalf of the workman, notice through registered post was also sent to him. No evidence in support of the claim statement was adduced before this Tribunal. Consequently the management also did not adduce any evidence.

12. When neither the workman nor his authorized representative turned up to pursue their case on merits, there left no alternative than to hear the arguments of the authorized representative of the management alone and

reserve the file for award, keeping in view the long pendency of the case since year 2006 and reluctance of the workman's union to contest their case.

13. Heard learned authorized representative of the Food Corporation of India and perused the entire evidence on record.

14. The workman's union has come up with a case that the workman has illegally been charged for alleged storage loss and was punished with several recovery penalty orders. The claim of the workman has been rebutted by the management, justifying its action in issuance of charge sheets for storage loss and consequent penalties upon the workman.

15. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced by the party, invoking jurisdiction of the court, must fail. In the present case burden was on the workman's union to set out the grounds to that the action of management of FCI towards imposing the penalties upon the workman was unjust. It was the case of the workman's union that the workman was illegally been imposed various recoveries for alleged storage losses. This claim of the workman's union had been denied by the management by the way of filling a written statement, accordingly, it was incumbent upon the workman's union to lead evidence to prove its case that the alleged in just was done to the workman concerned.

16. In the present case the workman's union has not turned to substantiate its case by way of filing any oral evidence. Mere pleadings are no substitute for proof. It was obligatory on the part of workman's union to come forward with the evidence in support of his pleading that the workman had illegally been imposed with several penalties; but the workman's union failed to forward any evidence in support of its claim as it did not turn up after filing rejoinder before this Tribunal. There is no reliable material for recording findings that the alleged injustice was done to the workman.

17. Accordingly, the reference is adjudicated against the workman's union; and as such, I come to the conclusion that the concerned workman, Mohamad Jafar is not entitled to any relief.

18. Award as above.

LUCKNOW

23rd September, 2015.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 8 अक्टूबर, 2015

का०आ० 1984.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफ.सी.आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम, न्यायालय लखनऊ के पंचाट (संदर्भ संख्या 06/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/10/2015 को प्राप्त हुआ था।

[सं० एल - 22012/89/2002 आईआर (सीएम-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th October, 2015

S.O. 1984.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 06/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 08/10/2015.

[No. L-22012/89/2002-IR(CM-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

RAKESH KUMAR

PRESIDING OFFICER

I.D. No. 06/2003

Ref.No. L-22012/89/2002-IR(CM-II) dated 09.10.2002

BETWEEN

Sri Rakesh Babu Sharma
2/328, Rashmikhand
Sharda Nagar
Lucknow (U.P.)

AND

1. The District Manager
Food Corporation of India
29 B.N. Road
Lucknow

AWARD

1. By order No. L-22012/89/2002-IR(CM-II) dated 09.10.2002 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Rakesh Babu Sharma, Sharda Nagar, Lucknow and the District Manager, Food Corporation of India, Lucknow for adjudication.

2. The reference under adjudication is:

“Kya Bhartiya Khadya Nigam, Lucknow Dwarka Sri Rakesh Babu Sharma S/o Sri Kailash Chandra Shrma, Sticher Ko Dinak 20/23.08.2001 Ko Naukari Se Nikala Jana Nyaochit Hai ? Yadi Naign, to Karmkar Kisanutosh ka Adhkari Hai?”

3. In brief the workman has stated in the claim statement A-7 that he was served upon a charge sheet dated 30.06.1996, Sri S.A. Khan, AM (QC) was appointed as enquiry officer to enquire into the charges but suddenly he was replaced by Sri M.D. Katiyar. On 20.09.1997 the date fixed by the enquiry officer Sri S.A. Khan, the workman appeared there, later on Sri M.D. Katiyar fixed 12.07.2000, and the workman appeared before him, copy of the appointment order of Sri M.D. Katiyar was provided to him on 12.07.2000.

4. The enquiry officer has never served upon the applicant in person while he was present in the office nor sent on the correct address. The applicant was always ready and willing to appear in the enquiry but he was never informed about the date of enquiry.

5. It has further been stated in the claim statement that all the leaves mentioned in article-I of the charge sheet having already been sanctioned by opposite party *vide* office order no. A/1/PF (1284) dated 29.09.1997 which indicates the period of leave alleged in the impugned order has already been regularized. It is well settled that once the penalty has been awarded for any alleged misconduct, no other penalty can be awarded. It is a case of double JEOPARDY as such the impugned order is illegal. The alleged notice for attending enquiry has never received by the applicant and as such he could not attend the enquiry as such the entire enquiry proceedings are violative of nature justice. It has further been alleged in the impugned order that the applicant was absent *w.e.f* 13.02.1996 without any intimation. This allegation is vague, as it has not given any date up to which applicant was absent. It is totally incorrect that the applicant was absent from 13.02.1996. That the number of documents will prove that the applicant was present on 13.02.1996 and onward. It has been alleged that the applicant was absent in the enquiry on several dates but the fact is remain that the notice to the applicant was not given, as such question of appearance does not arise. The entire proceedings were conducted in utter violation of natural justice.

6. The workman has pleaded that copy of the enquiry report was not served upon the workman, neither prior to impugned penalty order no given with the penalty order, otherwise the applicant could have clarified the position. The applicant has alleged that the impugned order of dismissal has been passed ignoring the principle of natural

justice and without application of mind. He was prayed to set aside the impugned order dated 23.08.2001 and reinstate with all consequential benefits including back wages etc.

7. The management has filed written statement A2-11 wherein the allegations levelled in the claim statement has been denied. The management has stated that the workman was a habitual absconder and had also committed misconduct, therefore, under Regulation 1971 charges were framed, which pertained to his prolonged absence from duty without any reasonable cause and secondly the applicant disposed of immovable property financed by the FCI and also acquired immovable property without previous sanction and knowledge of the competent authority. On enquiry both the charges were found proved. After adequate opportunity the penalty orders of dismissal were imposed upon the workman which was proportion of the ate to the guilt of the workman. The opposite party has further stated that the applicant has only challenged part other charges in the penalty order dated 20/23.08.2001.

8. The management has emphasized that the workman was habitual absconder and has been remaining on leave without information or on sufficient grounds. The applicant was absent on various dates up to 09.02.1996, he was again absent from duty *w.e.f* 13..02.1996 without any sufficient cause or information. The opposite party has alleged that the workman concealed material facts from this court and initially departmental proceedings were initiated against him under FCI (Staff) Regulation 1971, minor penalty of stoppage of the one increment without cumulative effect was also imposed earlier.

9. The opposite party has further stated that the applicant in the present case has been imposed penalty of dismissal from services against the willful absence from duty from 13.02.1996 as also for acquiring and disposing of immovable property without prior information and permission from competent authority. Thus, the punishment imposed were for willful acts and misconduct on different period, the question of 'Double Jeopardy' is not applicable and is misconceived averments. It is submitted that the applicant was absent from duty *w.e.f* 13.02.1996. The applicant was not only informed about all the disciplinary proceedings but was also acquitted with them. The applicant was served with memorandum dated 30.10.1996 which was duly received by him on 01.09.1997. The applicant after receiving the aforesaid memorandum submitted his reply dated 05.09.1997 denying the charges and also was present in the disciplinary proceedings before the Enquiry Officer Sh. S.A. Khan on 20.09.1997 as is apparent from the order sheet of the disciplinary proceedings dated 20.09.1997. That on account of the death on Enquiry Officer Sri S.A Khan, Sri M.D. Katiyar was appointed Enquiry Officer as per procedure in vogue to carry on the enquiry. The applicant preferred a letter dated 12.07.2000 addressed to the Enquiry Officer Shr. M.D.

Katiyar to these objections and the order sheet dated 12.07.2000 of the Disciplinary proceedings to these objections which clearly reveals that the claimant was not only well versed and informed with the enquiry proceedings, but has also attended the same on 12.07.2000 and sought adjournment. The aforesaid documents clearly reveal that the applicant was duly informed about the enquiry proceedings and has also initially attended them and even informed about 27.07.2000 being fixed as next date.

10. The applicant thereafter even failed to appear before the enquiry proceedings as also for duty w.e.f. 01.08.2000 as such notice dated 16.08.2000 was sent by the enquiry officer to the claimant for attending upon the enquiry proceedings and next date was fixed as 26.08.2000 failing which the case was to be disposed of ex-parte. That the claimant despite notice again failed to appear as such again registered notice was sent for dated fixed on 08.09.2000. That despite of repeated notices when the claimant failed to appear in disciplinary proceedings as also in the office, notice was even published in daily newspapers. That despite repeated notices the applicant abstained from duty even failed to appear before the Enquiry Officer in disciplinary proceedings without any sufficient cause. Thus the applicant is himself responsible for such willful acts and omission on his part despite adequately informed. When the applicant remained absent from duty again after 01.08.2000 and also failed to appear before the Enquiry Officer, the enquiry officer submitted his report, the opposite party further sent the memorandum dated 18/19.04.2001 along with enquiry report to the applicant calling upon him to make representation if any.

11. It has also been pleaded in written statement that thus the applicant was not only informed and acquainted throughout with disciplinary proceedings but was also afforded adequate opportunity at a possible time, rather the applicant failed to attend or give reply or reasonable causes for this absence. It is worth mentioning that the opposite party even notified the penalty order in daily newspapers. It is submitted that as the applicant was absent from duty w.e.f 13.02.1996 and continued to remain absent without either information or assigning any reasons despite repeated reminders from the opposite party. The disciplinary proceedings were initiated against him vide memo dated 30.10.1996 and even then the applicant has remained absent from duty and as there were no information as to how long the applicant will remain absent as such it was not possible in the memo and charges dated 30.10.1996 to give any date up to which the applicant was absent as till then he had failed to attend the duties. It is submitted that the applicant remained absent from duty willfully and without assigning any reasons w.e.f 13.02.1996 and was even asked to join duties vide telegram dated 21.06.1996 and reminder through letter dated 27/28.06.96 & 15.07.96 when despite repeated letters and informations the applicant

filed to report for duties and remained absent, the opposite party published notice in Daily Newspapers on 3rd Sept. 1996 and 4th Sept., 1996. That despite repeated reminders the applicant examined was absent from duty w.e.f 13.02.1996 and for which punishment has been imposed as along with other charges. It is submitted that the applicant was informed and acquainted with the disciplinary proceedings as also the enquiry proceedings, rather it was the applicant who despite having full informations had abstained himself on various occasions without any explanation. The applicant was served with the memorandum dated 30.10.1996 which was duly received by him on 01.09.1997. The applicant was informed about the enquiry proceedings and was even present on 20.09.1997. Again on 12.07.2000 the applicant not only preferred a letter but also appeared before the enquiry officer as is apparent from the perusal of the order sheet filed and was informed about the next date. The applicant thereafter failed to appear before the disciplinary proceedings. The opposite party thereafter issued a notice and even published the same in daily Newspaper. Thus despite notices and information about the Enquiry proceedings the applicant failed to appear thereafter, for the reasons best known to him. Thus the applicant himself was negligent and responsible for non-appearance before the enquiry proceedings although being well acquainted with it, thus there being no violation of any natural justice as all opportunities were afforded to the applicant.

12. It is further submitted in written statement that the applicant was afforded all opportunities from the very inception of disciplinary proceedings till the passing of the penalty order. The applicant was duly informed about the enquiry proceedings and thereafter through publication in newspaper. That once the enquiry report was received, the opposite party *vide* registered letter dated 13/19.04.2001 sent the enquiry report and also called for representation from the applicant. Thus it is wrong to state that no enquiry report was served upon the applicant. The opposite party thus afforded opportunity prior to the passing of the penalty order dated 20/23.8.2001, and even further published the order in Newspaper also. It is submitted that the applicant was a habitual absentee from duty and despite warnings and minor penalty imposed had been keeping the habit of willful prolonged absent from duty. Besides he has failed to seek permission or inform the competent authorities towards sale and purchase of immovable properties also. Considering the gravity of charges and the fact that the applicant had failed to maintain absolute integrity, devotion to duty, the disciplinary authority due and appropriate opportunity to the applicant and appreciating the evidences on record and facts of the case and application of mind. The punishment being proportionate to the seriousness of the charges leveled against the workman for utter violation of regulation 31, 32 & 48 of the FCI (Staff) Regulations 1971. The management

has requested to reject the claim statement along with special cost in favour of the management.

13. Rejoinder A1-12 has also been filed by the workman wherein the main contents of the written statement have been denied strongly and reiterated the pleas taken in the claim statement.

14. The opposite party has filed certain documents along with written statement A-11. List of documents C-20 annexing therein certain documents has been filed by the workman. The management has submitted copy of the comprehensive enquiry proceeding along with application C-25.

15. The management examined Sri Babu Lal as management witness, he was duly cross-examined on behalf of the workman.

16. The Tribunal *vide* its order dated 07.11.2005 observed as under:

“श्रमिक द्वारा अपने अभिकथन में कहा गया है कि विभागीय जांच कार्यवाही न्याय के नैसर्गिक सिद्धांतों की अवहेलना करते हुए की गई तथा इन्कवारी रिपोर्ट की प्रतिलिपि उसे उपलब्ध नहीं कराई गई।

अतः उक्त बिन्दु पर उभय पक्ष अपनी साक्ष्य 25.1.2006 को प्रस्तुत करें”।

Accordingly the parties were called upon to examine their witnesses, in support of their rival contentions over the veracity of the departmental inquiry. The workman was afforded several opportunity for the same; but he refrained and finally on 15.06.2006, the authorized representative of the workman refused to examine its witness with endorsement that "Enquiry file FCI द्वारा फाइल की जा चुकी है अतः उसके आधार पर फैसला करने की कृपा करें।", resultantly, the management was called upon to adduce its evidence, thereafter the date was fixed for arguments.

17. The case got adjourned on several dates at one pretext or the other and in the mean time the authorized representative got expired. The workman was issued notices to appear before this Tribunal and contest his case but he did not bother to pay any heed to the notices. Accordingly, the argument of the authorized representative of the opposite party was heard on preliminary issue as well on merit, keeping in view the reluctance of the workman to contest his case and long pendency of the case since year 2003.

18. The workman in his written argument has contended that at the initial stage of inquiry he participated but on one of the intermediate dates no inquiry was held and thereafter he was not informed of the dates of the inquiry and the inquiry officer conducted ex-parte inquiry.

He has also asserted that he was not supplied with the documents demanded by him for his effective defence. Likewise, he was neither given copy of the inquiry report nor the Disciplinary Authority issued any show-cause notice before passing punishment order which caused prejudice to him and was in violation of principles of natural justice.

19. In rebuttal the authorized representative of the management has defended the departmental inquiry conducted by the management of the FCI. He has submitted that the workman had been afforded all reasonable opportunity to defend himself during the inquiry and there is no violation of any principle of natural justice. The punishment was imposed after having the charges proved against the workman and the punishment order as per Rules, thus, the domestic inquiry was fair and proper and findings of the inquiry officer are not perverse and the same is liable to be upheld.

20. Having gone through the rival contentions of the parties, it is evident that the workman had been participating in the departmental inquiry up to 12.07.2000 and next date was fixed for 27.07.2000; but the workman did not turn up. The workman alleged that the management did not inform him of date; but simultaneously he himself also failed to approach the management for getting next date of inquiry. The management has filed photocopies of several public notices published in the newspapers; but the workman even then did not turn up. This goes to show the indifferent attitude of the workman towards the proceedings which were going on against him.

Moreover, the workman failed to prove his contentions before this Tribunal that he was not afforded proper opportunities of self defence by not examining his witness in support of his pleadings. On the contrary, the management has well proved its case by filing documentary as well as oral evidence that the workman was adequately informed of the departmental proceedings and its outcome. It was the workman who did not turn up even after several notices by post as well through publication in the newspapers. The management witness in his cross-examination stated that the absence of the workman led to ex-parte inquiry against him.

21. Thus, from the facts and circumstances of the case and the discussions made hereinabove I am of the considered opinion that the departmental proceedings were conducted in accordance to the principles of natural justice; and accordingly the preliminary issue framed *vide* order dated 07.11.2005 is decided in favour of the management and against the workman.

22. Now this Tribunal has to look into another aspect of the case and that is to look upon the fact that the

punishment imposed upon the workman is proportionate or not. In *Joseph Solomon vs. Presiding Officer, Labour Court, U.P. Dehradun & another* 2012 (134) FLR 424 it has been observed that the Labour Court has ample power under section 11-A of the I.D. Act to substitute a lesser punishment, taking into consideration the facts and circumstances of the case. The principle of proportionality calls for interference of this Court into the punishment imposed by the management i.e. of dismissal/removal if it is harsh or excessive in comparison to the misconduct committed by the workman.

23. The management has argued that the Court cannot sit in appeal or it cannot re-appreciate the evidence relied before Inquiry Officer; in as much as it cannot alter the order or punishment. It was submitted that the scope of invoking the powers given under Section 11 A of the Act, by the Labour Court is confined to the condition that the Court should interfere with the order of punishment when it is disproportionate with respect to the misconduct committed or it is so harsh as to shock the conscience of the Court. It has further been argued that in the instant case the workman was given charge sheet for habitual absence and the workman during the course of departmental inquiry also remained absent which led to ex parte inquiry against him. Also, he did not appear before this Tribunal to prove his statement of claim, which goes to prove he case of the management the workman was habitual absentee and was rightly been imposed with the punishment of dismissal, therefore, there is no scope for this Tribunal to interfere with the punishment imposed upon the workman.

The management has further submitted that the workman being habitual absentee, was given various warnings earlier but he did not mend his ways accordingly the departmental inquiry was instituted and was punished for his proved misconduct. It has also been submitted that continuation of such an employee may lead to indiscipline in overall administration.

24. I have given my thoughtful consideration to the contentions of the authorized representative of the management and perused the record and the case laws relied on by the management.

25. In the instant case the workman was charge-sheeted with the allegation of habitual unauthorized absence. The inquiry and its findings are being upheld by this Tribunal, holding that the disciplinary enquiry was conducted in accordance with the principles of natural justice that the findings of the Enquiry Officer were not perverse'. Hence, after decision of the preliminary issues in the favour of the management, the only thing left for consideration of this Tribunal is check as to whether the punishment imposed upon workman is disproportionate, if so, this Tribunal should interfere into it within the provisions providing under Section 11 A of the Industrial Disputes Act, 1947.

26. Hon'ble Apex Court in *B.C. Chayurvedi v. Union of India*, (1995) 6 SCC 749 while discussing about the scope of judicial review, in disciplinary matters, has observed as under:

"The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, imposed appropriate punishment with cogent reasons in support thereof."

In *DG RPF vs. Sai Babu* (2003) 4 SCC 331, Hon'ble Apex Court has observed that:

"6.....Normally, the punishment imposed by a disciplinary authority should not be disturbed by the High Court or a tribunal except in appropriate cases that too only after reaching a conclusion that the punishment imposed is grossly or shockingly disproportionate, after examining all the relevant factors including the nature of charges proved against, the past conduct, penalty imposed earlier, the nature of duties assigned having due regard to their sensitiveness, exactness expected of an discipline required to be maintained, and the department establishment which the delinquent person concerned works."

In *United Commercial Bank vs. P.C. Kakkar* (2003) 4 SCC 364 Hon'ble Apex Court on review of a long line of cases and the principles of judicial review of administrative action under English law summarized the legal position in the following words:

"11. The common thread running through in all these decisions is that the court should not interfere with the administrators' decision unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the court, in the sense that it was in defiance of logic or moral standards. In view of what has been stated in Wednesbury case the court would not go into the correctness of the choice made by the administrator open to him and the court should not substitute its decision to that of the administrator. The scope of judicial review is judicial review is limited to the deficiency in decision-making process and not the decision."

12. To put it differently, unless the punishment imposed by the disciplinary authority or the

appellate authority shocks the conscience of the court/tribunal, there is no scope for interference. Further, to shorten litigation it may, in exceptional and rare cases, impose appropriate punishment by recording cogent reasons in support thereof."

In *Union of India vs. S.S. Ahluwalia* (2007) 7 SCC 257 Hon'ble Supreme Court reiterated the legal position as follows:

"8. The scope of judicial review in the matter of imposition of penalty as a result disciplinary proceedings is very limited. The court can interfere with the punishment only if it finds the same to be shockingly disproportionate to the charges found to be proved."

In *State of Meghalaya v. Mecken Singh N. Marak* (2008) 7 SCC 580 Hon'ble Supreme Court Stated that:

"The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be subjected to judicial review.

27. Hon'ble Apex Court in *Administrator, Union Territory of Dadra and Nagar Haveli vs. Gubhia M. Lad* (2010) 2 SCC (L&S) 101 has observed that

"The Legal position is fairly well settled that while exercising the power of judicial review the High Court or a Tribunal cannot interfere with the discretion exercised by the disciplinary authority, and/or on appeal the appellate authority with regard to the imposition of punishment unless such discretion suffers from illegality or material procedural irregularity or that would shock the conscience of the court/tribunal. The exercise of discretion in imposition of punishment by the disciplinary authority or appellate authority is dependent on host of factors such as gravity of misconduct, past conduct, the nature of duties assigned to the delinquent responsibility of the position that the delinquent holds, previous penalty, if any, and the discipline required to be maintained in the department or establishment he works. Ordinarily the court or the tribunal would not substitute its opinion or reappraisal of facts.

28. In the instant case the workman, was charge-sheeted with the allegations that he was regular habitual absentee from the duty. There is a series of absenteeism i.e. for 156 days in the year 1993, 145 days in the year 1994 for 169 days in the year 1995 and for 40 days w.e.f. 01.01.1996. However, the workman was issued charge-sheet dated

30.10.1996 for his absence since 13.02.1996. From perusal of the inquiry proceedings it is evident that the workman participated in the inquiry up till 12.07.2000 and thereafter he did not appear before the inquiry in spite of several public notices were published in the local newspapers. The workman repeated his similar conduct before this Tribunal as he did not appear before this Tribunal for years and not even after two registered notices, which were issued on the address given in the reference order as well as in the statement of claim filed by the workman himself. The above conduct of the workman shows his reluctance and habit of being absent arbitrarily without any reasons or due approval of the competent authority.

Hon'ble Andhra Pradesh High Court in *M. Vijaya Ram vs. P.O., Labour Court and others* 1989 (58) FLR 313 upheld the order to termination for habitual absence from duty even after several warnings being given for absence but with no result.

Here too there is ample evidence on record to show that the workman had been in a habit to remain absent without any proper application or prior permission of the Competent Authority which is highly objectionable, from administration point of view.

29. Hon'ble Apex Court in (2011) 1 Supreme Court Cases (L&S) 721 has observed that:

"7. It is now well-settled that the courts will not act as an appellate court and reassess the evidence led in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the inquiry has been fairly and properly held and the findings are based on evidence, the question of adequacy of the evidence or the reliable nature of the evidence will not be grounds for interfering with the findings in departmental enquiries. Therefore the courts will not interfere with findings of fact recorded in departmental inquiries, except where such findings are based on no evidence or where they are clearly perverse. The test to find out perversity is to see whether a tribunal acting reasonably could have arrived at such conclusion or findings, on the material on record. The courts will however interfere with the findings in disciplinary matters, if principles of natural justice or statutory regulations have been violated or if the order is found to be arbitrary, capricious, mala fide or based on extraneous considerations."

30. In the instant case, the charge of habitual unauthorized absence was found to be proved and principles of natural justice were properly observed while conducting the departmental inquiry; and also the findings of the Inquiry Officer were not found to be perverse. Therefore, under the facts and the circumstances and

considering the laws, there is no justification in interfering with the punishment imposed upon the workman by the Disciplinary Authority for proved gross misconduct of 'habitual unauthorized absence'. Accordingly, the workman, Shri Rakesh Babu Sharma, is not entitled for any relief.

31. Award as above

LUCKNOW RAKESH KUMAR, Presiding Officer
23rd September, 2015.

नई दिल्ली, 8 अक्टूबर, 2015

का.आ. 1985.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एफसीआई के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं० 1, धनबाद, के पंचाट (संदर्भ संख्या 165/1997) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08/10/2015 को प्राप्त हुआ था।

[सं एल-22012/358/1996-आई आर (सी-II)]

राजेन्द्र सिंह, अनुभाग अधिकारी

New Delhi, the 8th October, 2015

S.O. 1985.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 165/997) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of Food Corporation of India, and their workmen, received by the Central Government on 08/10/2015.

[No. L-22012/358/1996-IR(C-II)]

RAJENDER SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act,
1947

Ref. No. 65 of 1997.

Employer in relation to the management of Food
Corporation of India, Patna

And

Their workmen

Present: -Sri Ranjan Kumar Saran,

Presiding Officer

Appearances:

For the Employers	:-	Shree S.N. Goswami, Advocate
For the workman	:-	Shree V. Kumar, Rep.
State : Bihar	:-	Industry :- Food
		Dated 27/8/2015

AWARD

By Order No. L-22012/358/1996-IR (C-II), dated, 8/09/1997, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the demand of the FCI Executive Staff, Patna for regularisation of service of Shri Ganesh Jha and Smt. Badami Devi is legal and justified? If so, to what relief are the workers entitled and from which date."

2. This Case is received from the Ministry of Labour & Employment on 03.10.997. After receipt of reference, both parties are noticed. The Sponsoring Union files their written statement on 02.07.1998 and the management files their written statement-cum-rejoinder on 01.0.999. Two witnesses examined on behalf of the management but one witness examined on behalf of the workman. Document of workman marked W-1 to W-8, But no document marked by the management.

3. The short point to be decided in this case whether the casual employee will be regularised as class-IV employee or not.

4. The case of the workman is that the concerned workmen were employed on daily rated basis and designated as casual employee but they were performing the duty of regular class-IV employee of the corporation. There was no difference in between the duty of the concerned workman and the regular class IV workmen of the corporation but they were paid minimum wages much less in comparison to the wages and benefits of regular class IV workman. The concerned workman was entitled to get same and similar wages of a regular class IV employee and in terms of HQ circular dt. 6/5/87. The concerned workmen are entitled for their regularisation, so the action of the management in not allowing same wages is quite illegal and unjustified.

5. The case of the management that, and it is submitted in written statement that the concerned workman was engaged as casual labour from time to time at FCI office of Kishanganj to perform misc. jobs like sweeping and cleaning the floor of the office as well as for dusting the table and chairs and they were also required to supply drinking water as and when required.

6. It is also submitted by the management that they were never engaged as class IV employee to perform the jobs of watchman or messenger/peon etc. as they were never engaged against any permanent vacant post of class-IV employees they can not demand for absorption as class

IV employee.

7. On perusal of the record it reveals that three persons claims for regularisation, out of them one Sri Om Prakash Verma has already been regularised though Sri Ganesh Jha is still working as casual employees, has not been regularised.

8. The MW-2 is Depot incharge at Kishanganj, in his cross-examination said that three casual labours were working namely Om Prakash Verma, Smt. Badami Devi and Ganesh Jha.

9. The MW-1 states in his cross-examination, that the concerned workman was working at Kishanganj during my period. The workman was paid as per the bill passed by the District Office. He also proved Ext. W-7 and it is signed by the then Depot incharge. Kishanganj where the concerned workmen worked as per Ext. W-7 the concerned workman was engaged since Feb. 1986. He also said that, in FCI Ex-gratia is only paid to the regular employee.

10. Ext. W-3 series, which is the bill of Ex-gratia from 1995 to 2001 given in regular basis to concerned workmen which is signed by many officers. These documents proved that the concerned workman have been working continuously for more than 90 days in FCI in a calendar year.

11. Letter No. Gen 13. (32)/Misc/93-94 dated 27.5.1994 of Food Corporation of India, District Office, Purnea, marked as W-5 which has been proved that the concerned workman Sri Ganesh Jha was engaged from 01.02.86 and Smt Badami Devi was engaged from 01.01.86 i.e. before 6/05/87, by the circular of FCI. This circular is meant that the casual, temporary, daily or any type of workman who worked 90 days continuously in a calendar year is entitled to be regularised.

12. It is not understood why the casual employee who was worked for years together has not been regularised though there is two circular of FCI management issued on 06.05.1987 marked as Ext. W- another circular of FCI dated 09.09.1996 circular No. 38/1996 Ext. W-8 but the workmen is left over regularisation is to be taken up.

13. Considering the facts and circumstances of this case, I hold that the demand of the FCI Executive staff Union. Patna for regularisation of services of Sh. Ganesh Jha and Smt. Badami Devi is legal and justified. Hence the workman Sri Ganesh Jha be regularised as regular employee of the FCI against the vacant post of class-IV immediately or create post and regularized him from the date of reference. But as per MW-1 Smt. Badami Devi the concerned workman who was working in the similar post has died in the meantime, therefore she be given monetary benefits as regular employee from the date of receipt of reference by this Tribunal till her death. It is seen that the management adopted dilatory practice to stall the proceedings by

approaching Hon'ble High Court and also delayed the hearing before this Tribunal.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2015

कांआ 1986.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मैसर्स स्टील अथारिटी ऑफ इंडिया लिमिटेड, आरएमडी के प्रबंधन के संबंध में उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं० 36/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 06.10.2015 को प्राप्त हुआ था।

[सं० एल-29012/73/1998-आईआर(एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1986.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/1998) of the Central Government Industrial Tribunal Cum Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Steel Authority of India Ltd. RMD and their workman, which was received by the Central Government on 06.10. 2015.

[No. L-29012/73/1998-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 36 of 1998

Parties: Employers in relation to the management of
Steel Authority of India Ltd., RMD

AND

Their workmen

Present: Justice Dipak Saha Ray,

.....Presiding Officer

Appearance:

On behalf of the : Mr. L.K. Paul, Ld.Counsel,
Management

On behalf of the : Mr. A. Bhadury, Authorised
Workmen representative.

State : West Bengal Industry : Steel

Dated: 18th September, 2015

AWARD

By order No. L-29012/73/98/IR(M) dated 18.09.1998 and Corrigendum of even number dated 04.03.1999 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudications:

"Whether the action of the management of Raw Material Division, Steel Authority of India Ltd. Calcutta, in terminating the services of Shri Om Prakash Ojha, Khalashi, Gr. II. w.e.f. 19.07.1991 is just and fair? If not, to what relief the concerned workman is entitled?"

2. Record reveals that soon after receiving the instant order of reference dated 18.09.1998 from the Ministry, the parties to this reference were given opportunities to adduce evidence both oral and documentary and after hearing argument of both the parties an Award was passed on 07.05.2002.

3. Being aggrieved by and dissatisfied with the said Award, both the parties filed separate Writ Petition before the High Court, Calcutta. But both the writ petitions were disposed of with a direction to this Tribunal for fresh adjudication of the reference. Accordingly the parties were again given further opportunities to adduce evidence and to make argument. Accordingly, the parties adduced evidence and proved documents. Thereafter on hearing argument of both the parties and after considering the evidence on record the instant reference has now been adjudicated.

4. the union in its statement of claim has stated as follows:

The concerned workman was appointed by M/s. Steel Authority of India Ltd., Bokaro Steel Plant as Khalashi Grade-II on 02.06.1990 and was deployed to work in the Mine at Jairam Nagar/Belakothar prospecting camp, Madhya Pradesh and since then his service was regulated by the Raw Material Division of the SAIL. It is stated that besides Steel Plant, the Steel Authority of India is also the owner of different mines situated at different places in India. For smooth functioning of the administration and the business, the Steel Authority of India established one division known as Raw Material Division in order to control the mines under it. the Head Office of that Division is at Kolkata. It is further stated that the workman who rendered service for more than 240 days, was illegally removed from service w.e.f. 19.07.1991 without observing the mandatory provisions of Section 25F of the Industrial Disputes Act, 1947 and also violating the terms and condition of the tripartite settlement dated 15.01.1991 and the agreement dated 21.08.1990. According to the union other two workmen namely Noor Alam and P. Khandula who were junior to the concerned workman, were posted at Jairam Nagar. They

were also terminated along with him (*i.e.* concerned workman) and subsequently they were reappointed. But the case of the workman was ignored in violation of Section 25G of the Act. It is also alleged he was not offered any alternative employment on the ground that there was closure of the establishment at Jairam Nagar/Belakothar, though the management subsequently appointed as many as 500 persons at Kiriburu and Meghataburu without exploring the legal provisions and ignoring the rule of natural justice and fair play. It is further contended that he himself as well as through the union made several representations before the management for his reappointment, but in vain. Accordingly, the industrial dispute was raised. Hence this reference.

5. The management has opposed the case of the union by filing written statement contending, *inter alia*, that one camp was started by Bokaro Steel Plant at Belakothar/Jairamnagar in Madhya Pradesh to ascertain the deposit of minerals in that area and for starting the said camp some persons including Om Prakash Ojha, the concerned workman, were appointed purely on casual basis. Appointment letter dated 01.06.1990 was issued in favour of the concerned workman mentioning that the basis of employment should be casual for the post of Khalasi, Grade-II and daily wage was fixed at Rs. 54.58 and the duration of employment was 89 days. It is contended that the workman accepted the terms and condition of the appointment letter and joined at the aforesaid camp on 18.06.1990. It is further stated that the management closed down the said prospecting camp as no viable deposits were found in the area and accordingly, the employment of the concerned workman was terminated vide letter dated 19.07.1991. In that letter the workman was requested to collect all his dues as per the terms and condition of the appointment letter-meaning thereby that after observing all legal formalities the workman was terminated. It is further alleged that after joining the employment the workman worked 89 days and thereafter he was provided work on different times whenever his service as casual worker was needed. But he was never in service beyond 89 days at a stretch and never worked beyond 240 days during his entire service period *i.e.*, from 01.06.1990 to 19.07.1991. It is alleged on behalf of the management that there was no violation of tripartite settlement as the said settlement was signed by the management of Bokaro Steel Plant and their union after formation of Raw Material Division which is a separate unit and its management is different to that of the management of Bokaro Steel Plant. It is further alleged that the termination of service of the concerned workman is not illegal or improper or unfair as the same was made after observing all formalities of law. Accordingly it is prayed that the reference may be answered in the affirmative.

6. In this case the union examined two witnesses and proved five (five) documents (Exhibits W-01 to W-05).

Similarly management has examined two witnesses and proved eight (8) documents (Exhibits M-01 to M-08).

7. It is argued on behalf of the management that this Tribunal at Kolkata has no jurisdiction to adjudicate the instant reference as the concerned workman was appointed and also terminated by Bokaro Steel Plant, Madhya Pradesh.

8. But admittedly the workman was appointed for working at prospective camp under Raw Material Division of SAIL whose Head Office was situated at Kolkata. It further appears from the oral evidence of WW-02 that there was no permanent postal address of any prospective camps. The said camps were under control of Kolkata Head Office of Raw Material Division of the SAIL. The said witness also stated that salary and wages of the employees of those camps were paid according to the sanction and/or approval of the Head Office at Kolkata. During cross-examination no suggestion was put to the witness denying the said oral testimony.

9. considering the above facts and circumstances it appears that the argument as advanced on behalf of the management has no merit as the workman used to work under the control and supervision of the Head Office of Raw Material Division of SAIL which situates at Kolkata.

10. In this case there is no controversy that after termination of the workman, more than 500 persons were recruited to work as Khalasi at Kiriburu and Meghataburi. There is also no dispute that other two terminated workmen namely Noor Alam and P. Khandula, who were on the same footing with the concerned workman, were reappointed subsequently.

11. The controversy mainly relates to the question as to whether the concerned workman was in continuous service as per the provision of Section 25F of the Act.

12. It is the case of the workman that during his tenure he worked continuously and uninterruptedly for more than 240 days.

13. Admittedly the workman was appointed on the basis of appointment letter (Ext. M-02). Thereafter his service was extended several times (Exts. M-01 to M-03). Ext. W-05 issued by the management also goes to show that the workman worked for more than 240 days during his service period. In this connection it is desirable to mention that the witness namely Shri Nirmalendu Chattopadhyay (WW-02) has proved the photo copy of the document marked Ext. W-05 by stating that ".....It is a part of administrative file on the representation made by the workman concerned and in this connection noting was made by officials and myself on the aforesaid date....." But the management raised objection at the time of admitting the said document (Ext. W-05) in evidence. It was contended that the original document was not available.

But it was not specifically stated that the said document was forged or manufactured. From the evidence of WW-02 it further appears that the said document was signed by D.G.M. (P. & A) and C.P.M., Shri Ojha along with the witness (WW-02)... The management did not attempt to examine D.G.M. (P & A) and C.P.M. to establish that the signatures appearing on the document were not their signatures. In view of the above facts and circumstances there is no reason to disbelieve the document marked Ext. W-02.

14. Now on careful perusal of the order of termination (Ext. W-03) it appears that the workman was asked to collect his dues and pay for notice period as per terms of the appointment letter (Ext. W-02). Ext. W-02 goes to show that notice period is 15 days. Considering the said documents viz. Exts. W-02 and W-03 with reference to the provision of Section 25F of the Act and also the observation of the Bombay High Court Reported in 1992 (65) FL 977 and 2001 (89) 375 it appears that the management did not comply with the provision of Section 25F of the Act at the time of terminating the workman from service.

15. In this case, it is not the case of the management that before appointing the said 500 persons as Khalasis or before appointing the said two workmen namely Noor Alam and P. Khandula, the concerned workman was offered the job as per the provision of Section 25H of the Act.

16. In view of the above facts and circumstances it appears that the claim of the union/workman is legal and justified and accordingly the instant reference is answered in the negative.

17. Admittedly the prospective camp of the Raw Material Division of SAIL at Jairam Nagar was closed down. But it is not the case of the management that the Raw Material Division has also been closed down and that there is no post of Khalasi in that Division. Accordingly, the concerned workman is entitled to be absorbed in the Raw Material Division of the Steel Authority of India in the post of Khalasi Grade II.

18. Considering further the facts and circumstances and since the workman has not worked in Raw Material Division after his termination it appears that justice would be best served if the concerned workman is entitled to get half wages for the period from the date of his termination to the date of his re-employment.

19. Award is passed accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 18th September, 2015

नई दिल्ली, 12 अक्टूबर, 2015

का०आ० 1987.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स यूरेनियम

कार्पोरेशन ऑफ इंडिया लिमिटेड के प्रबंधन के संबंध में केन्द्रिय सरकार और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-1, धनबाद के पंचाट (संदर्भ संख्या 32/2000) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/10/2015 को प्राप्त हुआ था।

[सं एल-42012/9/1999-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1987.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2000) of the Central Government Industrial Tribunal/Labour Court-1, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Uranium Corporation of India Ltd. and their workman, which was received by the Central Government on 06/10/2015.

[No. L-42012/9/1999-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL

NO. 1, BHANBAD

In the matter of reference U/s. 10 (1) (d) (2A) of I.D. Act. 1947.

Reference: No. 32/2000

Employer in relation to the management of Uranium Corporation of India Ltd.

AND

Their workmen

Present: Shri R.K. Saran

Presiding Officer

Appearances:

For the Employers: Shri P.R. Rakshit Advocate

For the workman.: None

State: Jharkhand Industry:- Uranium Mines

Dated 4/9/2015

AWARD

By order No. L-42012/9/99/IR (M) dated 12.01.2000 the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

“Whether the action of the management of Uranium Corporation of India Ltd, Jadugoda in withholding two increment of Shri R.K. Verma is justified? If not, to what relief the workman is entitled?”

2. After receipt of the reference both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence pass a No disputed Award is passed. Communicate to the Ministry.

R.K. SARAN, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2015

कांआ 1988.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स इंडियन ऑयल कार्पोरेशन लिमिटेड के प्रबंधन के संबंध में केन्द्रिय सरकार और उनके कर्मचारियों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 08/2012) प्रकाशित करती है जो केन्द्रीय सरकार को 06/10/2015 को प्राप्त हुआ था।

[सं एल-30012/15/2009-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1988.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 08/2012) of the Central Government Industrial Tribunal/Labour Court, Kanpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Indian Oil Corporation Limited and their workman, which was received by the Central Government on 06/10/2015.

[No. L-30012/15/2009-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE SHRI SHUBHENDRA KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 08/2012

In the matter of dispute between-

Shri Bhawar Singh,
S/o Sri Ram Prasad,
C/o Sri P K Tiwari, Auth. Repr.,
96/196, Old Ganesh Ganj,
Lucknow. UP.

And

The Executive Director,
Indian Oil Corporation Limited,
Mathura Refinery, Mathura

AWARD

1. Central Government *vide* notification No. L-30012/15/2009 (IR(M) dated 14.10.09, has referred the following dispute for adjudication to this tribunal.

2. Whether the action of the management of Indian Oil Corporation, Mathura Refinery, Mathura, in terminating the service of Sri Bhawar Singh, Tech. Gr-2, *vide* order dated 30.11.2005, is legal and just? If not what relief the workman is entitled to and from what date?

3. It may be pointed out here that the present reference was referred to Central Government Industrial Tribunal cum Labour Court, Lucknow, but in compliance of order dated 07.03.2011 of the Hon'ble High Court of Judicature at Allahabad, the Ministry of Labour, Government of India, New Delhi, Dated 20.12.2011, transferred the proceedings in this tribunal from CGIT cum Labour Court, Lucknow.

4. The instant case file was received in the office of the Tribunal and *vide* order dated 03.02.12, the case was registered a fresh and new case no. 08/12 was allotted and registered notices were sent to the contesting parties from the office of tribunal on 16.02.2012, fixing further proceedings on 23.03.2012.

5. It is needless to mention here that while the proceedings were pending before the CGIT cum LC, Lucknow, the workman has already filed his claim petition seeking relief mentioned in the relief column of the claim petition. The opposite party has filed their reply on 20.04.12, and the claimant was directed to file rejoinder and documentary evidence by 05.06.2012.

6. It is pertinent to mention here that after the claim petition was filed by the workman he stopped attending the proceedings of the case either before CGIT, Lucknow, or before this tribunal and ultimately on his behalf his authorized representative put up his appearance in the case on 31.07.2013 and moved application supported with affidavit praying therein to recall order dated 23.07.2012, where by the worker was debarred from filing rejoinder and documents.

7. After moving of the above application neither the worker nor his representative appeared in the case.

8. Now coming on the merit of the case it may be mentioned here that it is a common ground for that of the management after detecting theft of diesel from Mathura Tundla Pipe Line, the workman was issued charge sheet/suspension order by the opposite party on 14.11.2003, for violating certain provisions certified standing orders. Upon

considering the reply dated 08.12.2003, submitted by the claimant against the charge sheet, it was decided by the opposite party to hold a regular departmental inquiry and accordingly Sri V K Shukla and Sri R S Chauhan, were nominated as enquiry officer and presenting officer respectively. Enquiry into the charges against the claimant commenced from 31.03.2004 and closed on 02.09.2014 by the enquiry officer. Where after enquiry officer directed the claimant as well as presenting officer for submitting their respective written briefs.

9. The enquiry officer after evaluating the oral as well as documentary evidence filed by the contesting parties submitted its inquiry report dt. 28.02.2005. The claimant submitted his representation against the inquiry report on 25.04.2005, and by order dated 06.05.2005, the inquiry was reopened by Chief Maintenance Manager, and accordingly the claimant was informed by the enquiry officer about reopening of the inquiry and the second inquiry proceeding exhausted by the enquiry officer and he submitted a revised inquiry report dated 20.09.2005, yet again the claimant was granted opportunity to submit his representation against revised inquiry report and he responded on 20.10.2005 and after considering the representation of the claimant finally the workman was dismissed from the service of the company by order dated 30.11.2005. The claimant preferred an appeal against the order of dismissal before the appellate authority on 14.12.2005, in which the appellate authority confirmed the order of the disciplinary authority dated 30.11.2005, *vide* order dated 12.01.2006.

10. Thereafter the claimant raised an industrial dispute challenging the action of the management which is under consideration before this tribunal.

11. The claimant in his claim statement has assailed the action of the management on a number of grounds *viz.*, he was appointed by the opposite party on 16.05.81 as labour Grade-2; that considering the efficiency of the claimant he was given promotion by the opposite party at the post of Technician Gr.-2, Claimant has admitted that he was having 21 bighas of land in Aganpura Gaon; that he has further admitted that he was issued charge sheet for some serious misconduct on his part by Maintenance Manager; that he was placed under suspension with ill motive and he was being prevented from his working; that he was deprived from his effective defence in the inquiry inasmuch as he requested to engage a legal practitioner in his defence as he is not able to nominate his defence representative which was rejected by the management; claimant has also stated that he produced his witnesses before the enquiry; he also claimed that he was falsely inculpated in the present misconduct; he goes on to state that he could not present his case effectively before the inquiry as he was not permitted to appoint his defence person of his choice and no information in this regard was ever communicated to him by the management; that no

copies of the documents going to the root of the charges were ever supplied to him by the enquiry officer; that the disciplinary authority did not apply his proper mind to the representation submitted by him against the reply to the enquiry report and as such the conclusion drawn by the enquiry officer is non-est in the eye of law; and he has also challenged the action of the opposite party which are not necessary to be mentioned here.

12. Based on the above pleadings it has been prayed by the claimant that the action of the management in dismissing him from service be held illegal and unfair and he be directed to be reinstated in the service with full back wages, continuity of service and with all consequential benefits.

13. The opposite party in their reply has pleaded that the claimant has rightly been charge sheeted as he had committed misconduct of grave nature; that inquiry against him was held adhering the principles of natural justice and rules governing the disciplinary action; that the enquiry officer has submitted his report with open eyes, open mind and after well discussing the evidence brought on record of inquiry by the claimant, therefore, the findings recorded by the enquiry officer is well reasoned without there being any perversity or bias against the claimant; that the claimant in his claim petition has not brought any new facts; considering the report of inquiry, the claimant was rightly dismissed from the service of the management for his proved misconduct and in this way he was given punishment commensurating the with the gravity of proved misconduct.

14. In the last it has been prayed that the claimant has committed misconduct of serious nature and does not deserves for any kind of leniency at the hands of this tribunal. The claim of the claimant is liable to be rejected being devoid of merit.

15. As observed in foregoing paragraphs of this award the claimant neither has appeared in the case nor adduced any evidence in support of his claim and moreover his application for recalling of order dated 23.07.12, was also rejected in default of the claimant by this tribunal vide order dt. 17.01.2014. As such it would be safely concluded that the claimant deliberately and willingly did not avail the opportunities made available to him by the tribunal and he failed to prove his case by adducing acceptable evidence in support of his case. The tribunal in the facts and circumstances of the case has no hesitation in holding that the claimant from the very initial stage was least inclined to contest the case, hence it is held that the claimant has not adduced any evidence in support of his claim before the tribunal.

16. On the other hand the opposite party apart from filing documents pertaining to the inquiry proceedings has also led oral evidence on affidavit of one Sri Vikas Garg as

M.W.1, who was produced by the management in the witness box for his cross examination by the other side but since none was present from the side of claimant on 15.04.2014, opportunity to cross the witness of the management by the claimant was closed.

17. In this way that opposite party has successfully proved their case by adducing documentary as well as oral evidence before the tribunal.

18. For the reasons recorded above, it is held that the workman has absolutely failed to prove his case before the tribunal and on the other hand the opposite party has established his case beyond all reasonable doubt.

19. Therefore, it is held that the claimant is not entitled for any relief pursuant to the reference order and the reference is decided against him and in favor of the opposite party.

SHUBHENDRA KUMAR, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2015

का०आ० 1989.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स लाईफ इंश्योरेंस कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चैन्नई के पंचाट (संदर्भ संख्या 74/2014) प्रकाशित करती है जो केन्द्रीय सरकार को 06/10/2015 को प्राप्त हुआ था।

[सं०एल-17012/119/2014-आईआर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1989.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/2014) of the Central Government Industrial Tribunal/Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s Life Insurance Corporation of India and their workman, which was received by the Central Government on 06/10/2015.

[No. L-17012/119/2014-IR (M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT
CHENNAI**

Friday, the 18th September, 2015

Present : K.P. PRASANNA KUMARI
Presiding Officer

Industrial Dispute No. 74/2014

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of LIC of India and their workman)

BETWEEN

Sri P. Vetrivel Murugan : 1st Party/Petitioner

AND

The Senior Divisional Manager : 2nd Party/
Life Insurance Corporation of Respondent
India Divisional Office,
"Jeevan Prakash" Bridge Station
Road, P.B. No. 16, Sellur
Madurai-625002

Appearance:

For the 1st Party/Petitioner : M/s R. Malaichamy,
Advocates

For the 2nd Party/Respondent : Sri C.K.
Chandrasekhar,
Advocate

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-17012/119/2014-IR (M) dated 03.09.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the Management of Life Insurance Corporation of India, Bathlagunda Branch in terminating the services of Sri P. Vetrivel Murugan is justified?" If not, to what relief the applicant is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 74/2014 and issued notice to both sides. Both sides have entered appearance through their counsel and have filed their claim and counter statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner had initially entered into the Respondent Corporation on 30.10.1990 in Bathlagundu Branch. He had been continuously working in the said branch upto 10.10.2013 as Sweeper as well as Peon. He was paid wages for his work. The petitioner used to attend the work of water carrier and sweeper from 06.00 AM to 09.00 AM. He also used to work as Peon from 09.00 AM till closure of the Branch on each working day. The petitioner has put in more than 20 years service. He had submitted representations to regularize his service in Class-IV cadre,

but his request was not considered. As per the order of the Supreme Court dated 18.01.2011 in the case of Anil and Others the Respondent issued application for regularization of those who had completed more than 5 years as on 18.01.2011. The petitioner had submitted his application for the written test. However, he was not issued any Call Letter. Persons similarly placed were permitted to appear for the test and most of them were appointed on regular basis in the service of the Respondent. The petitioner was not allowed to appear for the written test stating that he was above 25 years of age at the time when he joined the Respondent. The circular dated 27.11.1979 prescribing age limit is not a statutory recruitment rules but only an instruction. Apart from this, it is applicable for direct recruitment only. Age relaxation can be granted to the petitioner for regularization of his service since he has put in more than 20 years of service as on 18.01.2011. The petitioner is entitled to be regularized in service. An order may be passed directing the Respondent to reinstate the petitioner in service with backwages and all other attendant benefits and also to regularize the service of the petitioner by giving age relaxation.

4. The Respondent has filed Counter Statement contending as below:

The claim of the petitioner is not maintainable. The petitioner was not engaged as Peon as claimed by him, but was only engaged as a Coolie to do certain petty works in the office from 01.12.1990. Coolie charges were paid to him for cleaning, dusting and upkeep works in Bathlagundu Branch depending upon the necessity. It is denied that it was continuous and his employment was regular. The petitioner did not satisfy the eligibility criteria as per the scheme framed under the approval of the Supreme Court and so his application was not considered. The petitioner has no right to claim absorption in permanent post. It is incorrect to state that the circular dated 27.11.1979 is not binding on the petitioner. The petitioner's casual engagement was terminated based on the orders of the Apex Court dated 18.01.2011 where the scheme for absorption of eligible candidates was laid down. As the petitioner did not come under the criteria for consideration his claim is not maintainable. The representation of the petitioner has been considered and the inability to accede to his request for regularization has been conveyed to him by letter dated 27.08.2013. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and MWs 1 and 2 and documents marked as Ext. W1 to Ext. W22 and Ext. M1 to Ext. M3.

6. The points for consideration are:

- (i) Whether the action of the Respondent in terminating the service of the petitioner is justified?

- (ii) What, if any, is the relief to which the petitioner is entitled?

The Pains:

7. The petitioner has raised the dispute claiming reinstatement, continuity of service, back wages and other benefits and also regularization. The petitioner has claimed that he has been working with the Respondent from 30.10.1990 and was doing the work of Water Carrier, Sweeper and Peon. According to him, he had been working continuously with the Respondent and had worked for more than 20 years in the Respondent establishment.

8. It is not disputed by the Respondent that the petitioner was working under it. However, the case of the Respondent is that the petitioner was working as a coolie to do certain petty works and was paid coolie charges as and when he worked and he never worked as Peon.

9. In view of the contradictory contention raised it is necessary to decide what was the nature of work done by the petitioner. The petitioner has got into the witness box and has stated that he was actually working as Peon itself. The Respondent itself has issued a temporary employment certificate to the petitioner on 02.06.2011 in the wake of the Supreme Court order, to enable him to apply for a permanent post in the Respondent establishment. In this the petitioner's period of employment as temporary employee is shown to be from 01.12.1990 to till date. The duration of employment is shown as 20 years, 1 month and 17 days. So it is very clear from the Certificate issued by the Respondent itself that the petitioner had worked for more than 20 years with the Respondent by June 2001 at which time the certificate was issued. In Ext.W5 dated 22.10.2012 giving the details of employment of the petitioner he is shown as Peon on daily wages working from 30.10.1990. In Ext.W5, the document of the same kind dated 08.04.2013 he is shown as Sweeper on daily wages. Ext.W21 contains payment receipts in respect of the petitioner for the period from March 2012 to September 2013. In these receipts, of course, the payment made is described as wages for cleaning and maintenance of office buildings and bringing drinking water to the office. However, on going through these receipts it could be seen that the petitioner was continuously engaged and that payment was being made mostly every week and at a specific rate as could be deciphered from the payment. For example for the period from 16.07.2012 to 21.07.2012 Rs. 1500/- is seen paid. This is for 6 days. Receipts of other payments are also of such specific nature though the payment is described as wages for arranging work. So it is very much clear that the petitioner was being engaged regularly and his service was utilized for the work of Sweeper and Peon. The case of the Respondent that the engagement was only on need basis to do certain petty works could not be accepted. The petitioner seems to have been a part and parcel of the Bathlagundu Branch of the

Respondent from 30.10.1990 until he was disengaged, based on the order of the Apex Court.

10. The case of the Respondents is that application was called for from the temporary workers, a written examination was conducted and those who were found eligible were given permanent appointment in the Corporation. Those other persons who did not fit in the scheme were turned out of service on 31.08.2013. According to the Respondents the petitioner who was not eligible to apply for the test had ceased to be in employment consequent to the scheme approved by the Apex Court. It is the case of the Respondents that the petitioner is not entitled to claim reinstatement.

11. The counsel for the petitioner has been mainly relying upon the decision of the apex court in Tamil Nadu terminated full time temporary LIC Employees Association vs. LIC of India and others in Civil Appeal No. 6951/2009 and other appeals to advance the case of the petitioner. In this the Apex Court has found that the temporary employees concerned are entitled to reinstatement and permanency. In the above decision the Apex Court had found that even though the Corporation had entered into a compromise with some of the workers it will not affect the right of the workmen concerned to claim relief under the earlier national awards existing since those awards were not set aside even after the compromise. It has also been observed that in any case the compromise will not affect the rights of the parties to claim statutory benefits under the Industrial Disputes Act.

12. The counsel for the Respondents has pointed out that Civil Appeal Nos. 6951/2009 and connected appeals were de-tagged by the Apex Court while considering Ext.M1 cases since the issues involved in those cases were different from the cases considered in Ext.M1 order. On going through Ext.M1 it could be seen that such a representation was made and it is accordingly those appeals were de-tagged. The workmen involved in the above appeals were discharging work of perennial nature against permanent posts. It could be seen from the decision that there was an earlier award applicable to the parties and a compromise was entered into by the Corporation with some of the Unions while a case was pending. In Civil Appeal Nos. 6951/2009 and other cases it has been held that the direction given to the Corporation as per the Award regarding other workmen who were parties to the case and had not entered into a compromise has not been substituted by the terms and conditions of the compromise. It is pointed out by the counsel for the Respondents that it is in this background the decision has been rendered.

13. The counsel for the Respondents has referred to two earlier decisions of the Apex Court that has held that the provisions of the ID Act is not applicable to the workers of the Corporation. Reference was made to the decision in M. Venugopal vs. The Divisional Manager, LIC of India

reported in 1994 2 SCC 323. In this the Apex Court has considered Sub-Section 2(C) of Section-48 which has been incorporated in LIC Act by amendment. Section-48 of the Act provides that the Central Government may make rules to carry out the purposes of the Act. The rules may provide for terms and conditions of the service of the employees. As per Clause (cc) the regulations and other provisions in force immediately before the commencement of the Amendment Act with respect to the terms and conditions of the service of the employees shall be deemed to be the rules made under Clause (cc) as per Clause-2(A). Clause-2C of the same section states that the provisions of Clause (cc) and Sub-section 2B and any rules made there under shall have effect notwithstanding any judgment, decree or order of the any Court, Tribunal or other authority and notwithstanding anything contained in the Industrial Disputes Act or any other law, agreement, settlement, award or other instrument. Referring to these provisions it was held in Venugopal's case referred to above that the wisdom of the legislature in extending the protection of the provisions of Industrial Disputes Act or denying the same cannot be judged by the Courts unless any such step is held to be violative of any of the provisions of the Constitution. After the amendment introduced to Section-48 the employees of the Corporation shall not be entitled to protection to which they were entitled before coming into force of the amendment, though till then it was upto them to impose the rights or remedies in terms of the regulation so framed under the Corporation Act or in accordance with the provisions of the Industrial Disputes Act, it has been held. The counsel for the Respondents has also referred to the decision A.V. Nachane Vs union of India reported in AIR 1982 SC 1126 in this respect. In the above case it has been held that Section-48 (2C) read with Section-48 (2cc) authorized the Central Government to make rules to carry out the purpose of the Act notwithstanding the Industrial Disputes Act or any other law, which meant that in respect of the matters covered by the rules, the provisions of the Industrial Disputes Act or any other law will not be operative. The grievance raised in the case that excluding the employees of the Corporation from the purview of Industrial Disputes Act amounted to discrimination against them and as such the provisions of the amending act were violative of Article-14 of the Constitution were also rejected by the Apex Court. The counsel has also referred to the decision of the Apex court in LIC OF INDIA VS. ASHA RAMCHAND AMBEDKAR reported in 1994 2 SCC 718 where it was held that the instructions issued by the Chairman of the Corporation exercising his powers under the regulations framed under the Act were statutory in character and they have the force of law. Based on the decision of the Apex Court after acceptance of the scheme the Corporation had issued several instructions on the basis of which the petitioner and such others had ceased to be in employment. It has been argued that the instructions are not statutory in

character though the regulations are. It was in this context the above decision was relied upon. Thus the three bench decision of the Apex court in the case earlier referred to had held that Industrial Disputes Act will not apply to those employees coming under the LIC Act and its rules and regulations. The recent decision of the Apex Court in favour of the temporary employees of the Corporation were rendered in the context already referred to. Those employees were fighting their case even while the cases under Ext. M1 were pending and those were treated separately and decided separately in the background referred to above. So the decision in the above case could not be applied to the facts of the present case.

14. The counsel for the petitioner has been contending that the petitioner having put in almost 20 years of service is entitled to the benefit of the dictum laid down by the Apex Court in Uma Devi's case. He has pointed out that the Apex Court has permitted persons who had worked about 10 years to be regularized. However, that was only in cases where workman were working against sanctioned posts. In the present case there is no contention that the petitioner was working on a sanctioned post. He was just continuing as a temporary worker, though he had worked for several years. So the dictum laid down in Uma Devi's case in applicable to the present case.

15. There is no case for the Respondents that any notice, notice pay or compensation were given as required under Section-25F of the ID Act when the petitioner was terminated. The counsel for the Respondent has pointed out that in the absence of application of Industrial Disputes Act there is no necessity to comply with Section-25F of the Act also. He has referred to the decision of the High Court of Kerala in LIC of India Vs. Usha Kumari and others in Writ Appeal 2362/2009 in this respect. The High Court has referred to the decision of the Apex Court wherein the provisions of the Industrial Disputes Act were found inapplicable to the employees of the Life Insurance Corporation and has held that the provisions contained in Section-48(2C) of the LIC Act would override the Industrial Disputes Act and so termination of the employees cannot amount to retrenchment as provided under Section-2(oo) of the Industrial Disputes Act attracting Section-25F of the Act. It was a natural consequence, the Apex Court having found that Industrial Disputes Act is not applicable to those coming under the Life Insurance Corporation Act. This being so, the petitioner would not be entitled even to the benefit under Section-25 F of the Act. The termination of the petitioner was the consequence of the order of the Apex Court accepting the scheme for providing employment to eligible workmen who were working as temporary employees of the Corporation. Those who did not fit in with the scheme had to meet the consequence. The petitioner had also applied for participating in the examination conducted as per the scheme. He did not satisfy the prescribed age criteria at the time he started to work

with the Respondent. It is accordingly he happened to be eliminated and ceased to be in employment. The fact that the petitioner has applied for the examination would also show that he had accepted the verdict of the Apex Court and had submitted to the same. He has decided to raise the dispute only after his application was rejected. So the petitioner will not be entitled to any relief.

In view of my discussion above the reference is answered against the petitioner. An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri P. Vetrivel Murugan

For the 2nd Party/Respondent : MW1, Sri R. Nandakumar
MW2, Sri S. Srinivas Purushan

Documents Marked:

On the side of the Petitioner

Ex.No.	Date	Description
Ext.W1	27.11.1979	Circular by LIC, Central Office
Ext.W2	29.04.1983	Transfer Certificate
Ext.W3	20.05.2011	Letter of Executive Director (Personnel)
Ext.W4	02.06.2011	Temporary employment certificate to the cadre of Peon
Ext.W5	30.09.2012	Pay-Slip
Ext.W6	31.03.2013	Pay-Slip
Ext.W7	27.08.2013	Order of Manager of the Respondent
Ext.W8	10.10.2013	Petition to Assistant Labour Commissioner, Madurai
Ext.W9	09.11.2013	Representation
Ext.W10	13.11.2013	Reply to Assistant Labour Commissioner, Madurai by the Respondent
Ext.W11	25.11.2013	Reply to Assistant Labour Commissioner, Madurai by the Respondent
Ext.W12	02.12.2013	Rejoinder in Ref. No. 45/35/2013 by Petitioner
Ext.W13	20.12.2013	Reply to Assistant Labour Commissioner, Madurai by the Respondent

Ext.W14	23.12.2013	Petition to Assistant Labour Commissioner, Madurai
Ext.W15	05.02.2014	Interim order in Civil Appeal No(s) 6950 of 2013
Ext.W16	08.02.2014	Reply to Assistant Labour Commissioner, Madurai by the Respondent.
Ext.W17	14.02.2014	Petition to Assistant Labour Commissioner, Madurai
Ext.W18	31.05.2014	Failure report by Assistant Labour Commissioner, Madurai
Ext.W19	04.09.2014	Interim Order in Civil Appeal No(s) 6950 of 2013
Ext.W20	15.09.2014	Notice issued by this Hon'ble Tribunal
Ext.W21	March 2012 to Sept. 2013	Payment receipt for Peon
Ext.W22	April 2010 To Oct, 2013	SB Pass Book Xerox copies regarding entries of payment for the discharge of duty of Part-Time

On the side of the Respondent

Ex. No.	Date	Description
Ext. M1	18.01.2011	Hon'ble Supreme Court Order in LIC of India and Another Vs. D.V. Anil Kumar and Others -C.A. No. 953-968 of 2005
Ext. M2	16.07.2014	Judgment of Hon'ble High Court of Kerala in WANO. 2362/2009 in Op 39055/2002 in the matter of LIC of India Vs Usha Kumari & Others
Ext. M3	—	Section 48 (1&2) of the Life Insurance Corporation Act, 1956.

नई दिल्ली, 12 अक्टूबर, 2015

का० आ० 1990.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स मैक्स न्यू यार्क लाईफ इंश्योरेंस कॉर्पोरेशन लिमिटेड के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, धनबाद के पंचाट (संदर्भ संख्या 34/2012) को प्रकाशित करती है जो केन्द्रीय सरकार को 06/10/2015 को प्राप्त हुआ था।

[संएल-17012/15/2011-आई आर (एम)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1990.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 34/2012) of the Central Government Industrial Tribunal/Labour Court-2, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employees in relation to the management of M/s Max New York Life Insurance Co. Ltd. and their workman, which was received by the Central Government on 06/10/2015.

[No. L-17012/15/2011-IR(M)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD.

Present

SHRI KISHORI RAM Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)
(d) of the I.D. Act., 1947.

Reference No 34 OF 2012.

PARTIES : Sri Ritesh Kumar Sinha,
2nd Floor, "Kanti Kunj", Maa Bhawani
Complex, Rangatand, Dhanbad

Vs.

The Zonal Manager,
Max New York Life Insurance Co. Ltd., 15A
Hemanta Basue Sarani,
Continental Chambers, 2nd Floor, Kolkata-
700001.

Order No. L-17012/15/2011-IR(M)
dt.10.05.2012 & 15.10.2013

Appearances :

On behalf of the workman/Union : Mr. U.P. Sinha,
Ld. Advocate

On behalf of the Management : Mr. A.K. Sen
Ld. Advocate

State : Jharkhand
Industry : Insurance

Dated, Dhanbad, the 18th Sept., 2015

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d)

of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-17012/15/2011-IR(M) dt.10.05.2012 & 15.10.2013.

SCHEDULE

"Whether the action of the Management of Max New York Life Insurance Company Limited, Kolkata in terminating the services of Shri Ritesh Kumar Sinha *w.e.f.* 13.01.2010 now replaced with 17.03.2011 (as per its Corrigendum dt.15.10.2013) is fair legal and justified? What relief the workman is entitled to?"

On receipt of the Order No. L-17012/15/2011-IR(M) dt.10.05.2012 & its corrigendum 15.10.2013 the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No. 34 of 2012 was registered on 23.05.2012 and, accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their Ld. Counsels respectively appeared and contested the case.

2. The case of the petitioner workman Shri Ritesh Kumar Sinha as stated in the statement of his claim is that he was a permanent employee of M/s Max. New York Life Insurance Co. Ltd., working therein as Band 5 employee appointed on 1st Sept., 2008 as per the terms and conditions of the employment noted in his appointment letter. After accordingly joining the employment, he had been unblemishedly serving the OP/Management at Dhanbad Office, by continuously putting 240 days in a year and total 928 days. But without issuing any notice, charge sheet etc. any rhyme or reason, he was verbally communicated that his service stood terminated *w.e.f.* 13.01.2011 as per the instructions of Shri Srijib Banerjee, the Customer Service Manager. The petitioner by the e-mail reported the entire event to the CEO and the Head (H.R.) at the Head Office of the Company, forwarding its copy to other Senior Officers of the Company. The e-mail was received. The workman was assured of looking into the matter.

The workman was performing the jobs of (a) receiving and disbursing petty cash payment, (b) cash/cheque collection from customer and issuing payment acknowledgment receipts, (c) maintenance of ledger, cash book, inward and outward Dispatch Register, Computer Data Entry, (d) entertainment of customers by serving refreshment, tea, coffee etc. as per the instruction of the Branch Manager, the jobs of permanent and perennial in

nature- directly under the supervision of the Branch Manager. But he was disallowed to perform the jobs, though he was allowed to mark his attendance up to 16.03.2011. He was also paid his normal wages upto Feb, 2011, but not for the period from 1st to 16th March, 2011, the last date of his termination. Since his attendances was stopped from 17th March, 2011, since then his illegal termination actually affected. He was not given any notice or notice pay in lieu of notice or any compensation as required under Sec.25 F of the I.D. Act, 1947. Thus the action of the Management in terminating his service is illegal and violative of the principle of natural justice. It is also alleged that the workman being 39 years old has already crossed the age limit for a government job. He is sitting idle and jobless, despite his best efforts for getting a job anywhere. At last, the I.D. raised before the Authorities concerned under Sec.2A of the I.D. Act, 1947, but its failure in its conciliation resulted in the reference for an adjudication. The workman is entitled to reinstatement with full back wages, as the action of the management is not legal and justified.

3. The petitioner/workman in his rejoinder has denied the relevant allegations of the O.P./Management as incorrect and unjustified, further stating that the instant reference of the Industrial Dispute as referred by the Central Government is quite maintainable for an adjudication in the issue. It is also stated by the petitioner that on 13.01.2011, the workman was asked to resign with threat for coercive action by the Management, if not done so. Then the petitioner had lodged the complaint at the Police Station, Bank More, Dhanbad, where the issue was settled between him and the Branch Head by the Officer-in-charge concerned; and thereafter, the petitioner workman continued the work in the Branch Office from 13.01.2011 until he was illegally stopped from working *w.e.f.* 17.03.2011, despite the pendency of conciliation proceedings and in violation of Sec.33 of the Industrial Disputes Act., 1947. It is also alleged on his behalf that the workman was not served with any transfer order nor the employer submitted any documents concerning any disobedience or creation of any nuisance on its part before this Tribunal.

4. Whereas the contra pleaded case of the O.P./Management is that the M/s. Max Life (erstwhile as Max New York Life) Insurance Co. Ltd. is a Company registered under the Companies Act-1956, having its Corporate Office at 11th Floor, DLF Square Building, Jacaranda Marg, DLF Gurgaon-120021 and one of its Branch Office at 1st Floor, Krishna Plaza Unit No. 102 A, Matkuria Road, Bank More, Dhanbad-826001.

The Company (hereinafter referred to as MLI) is into the business of life insurance duly approved as per the Government of India through the Insurance Regulator (IRDA). It has its branches across India and it is widely acknowledged for its reputation and services. This

respondent has its niche for themselves in the insurance products as well as in the services across the country. The respondent had denied all the allegations of petitioner Ritesh Kumar Sinha (the Complainant). According to the respondent, the present dispute is unmaintainable in law and on facts, as the MLI has never threatened the complaint to terminate from service.

The Respondent has stated as a preliminary objection that the instant case of the complainant is false, malicious and malafide, so it is liable to be dismissed in limine in lack of bonafide cause of action as well as for the reason that the present claim is beyond the jurisdiction of the Authority concerned to entertain it under Sec. 12 of the Industrial Disputes Act-1947, as the complaint petitioner does not come under definition of the workman 2(S) of the said Act; since the Complaint /petitioner was performing the work purely of supervisory and managerial in nature, not manual and clerical in any way, as he was drawing salary of Rs 2,42,365/- (Rupees two lacs forty-two thousand three hundred and sixty five only) per annum. It was exceeding Rs, 10,000/- per month. He was appointed as the Operational Executive with the MLL. His work profile was of supervisory and managerial by nature.

It is also submitted that the dispute in question is not an Industrial dispute under Sec. (k) and Sec.2(s) of the said Industrial Dispute Act, because of the fact that the complaint/petitioner was entrusted with the Administrative work of the Company. So he does not qualify under the category of the workman under the said Act.

5. Further alleged on behalf of the O.P./Management is that the Complaint/petitioner was appointed in the service of the MLI as per the appointment letter dt.01.09.2008 at the office of the MLI situated at Gaya. According to clause 7 of the terms and conditions of the employment (Annexure A-I), the respondent has power to transfer the employee to any location at the sole discretion of the employer on the terms and condition of employment in place of positing. When the Dhanbad Office of the OP/Management had a vacancy, the Management transferred the complaint petitioner from Gaya to Dhanbad Branch on 01.02.2009, as Dhanbad is his native place. When the Branch Head at the Dhanbad Office called up the complaint petitioner in Jan., 2011, and informed of his transfer from Dhanbad to Bilaspur Office *w.e.f.* 17.01.2011. But the petitioner denied to accept his transfer letter and to follow the instructions of the Manager abruptly leaving the Dhanbad Office; therefore the petitioner kept on coming to the Dhanbad Office and creating nuisance in the office premises as well as marking his attendance at the Dhanbad Branch (the copy of Attendance Register as an Annexure -A-2). In this disobedience of the transfer by the petitioner to join the new office as per the transfer letter of the

Management, the Company did not pay him salary after Feb., 2011. As such the complainant petitioner has no *prima facie* case of adjudication.

The OP/Management has categorically denied the allegations of the petitioner as wrong, further stating that the complainant petitioner was not terminated from his service. The petitioner has rather violated the terms and conditions of the employment with the Company. Under such circumstances, the question of giving the petitioner a termination Notice or illegal termination or violation of natural justice does not arise. The petitioner is alleged to have tried to take advantage of his own wrong at the cost of the Company. As such the Company has acted in accordance with the Employment contract with the petitioner as contrasted with his false and frivolous claim with an ulterior motive to satisfy his ill design.

FINDING WITH REASONS

6. In the instant Reference Case, WW1 Ritesh Kumar Sinha, the petitioner workman himself for his own sake and MW1 Manish Dhar, the office Head of the Dhanbad Branch, for the OP/Management have been examined respectively.

Mr. U.P. Sinha, Ld. Counsel for the workman as per the written argument has submitted that he was appointed by the OP/Management on 1st Sept., 2008 (Ext. W.1) after due process of interview etc, and was posted at its Gaya Branch, wherefrom on his option, he was transferred to Dhanbad Branch where his service was orally terminated from 13.01.2011 without following the process of Natural justice, and the provision of Sec. 25F of the I.D. Act, 1947. Further submitted on his behalf is that he had made representations dt. 14.01.11 and 17.03.11 (Ext. W.2 & 4 respectively) as well as a complaint to the local police (Sinha application dt. 13.01.11 - (Ext. W.5) about threat to resign, though he was stopped from doing any work since 17.03.2011, he was allowed to attend the office and make his attendance up to 16.03.2011, yet he was paid wages up to Feb. 2011 but not for the period of March, 16, 2011; all the materials under his charge were taken by the Branch Manager from him as per the Hand Over Charge report dt. 13.01.11 (Ext. W.7). It is also submitted that the workman had put in 3 years continuous service more than 240 days attendance in a year prior to his illegal termination on 13.01.2011 in violative of the provision u/s 25 F of the I.D. Act without any enquiry and that new man was posted in his place against the sanctioned permanent.

Lastly Mr. Sinha, Ld. Counsel for the workman has emphatically submitted that it is settled law that for determination of a person as a workman, the only criteria is to look into the job he has been doing and not the wages/salary he is paid, not the designation he has been given. In the instant case as submitted by Mr. Sinha all the jobs right from receiving and disbursing petty cash payments to doing such other jobs both manually and by Computer as

per the instruction of the Branch Manager are of the workman, but not of the supervision or managerial, but same is clerical; thus the petitioner is the workman as defined u/s 2(s) of the I.D. Act., 1947. So far as the termination as defined u/s 2(oo) of the said Act is concerned, any termination which is not caused by way of Disciplinary Action is retrenchment except those under its exceptional clauses. Here the workman had been terminated without any disciplinary action for any misconduct. So it is his illegal retrenchment without following the provision of Sec. 25 F, and in such circumstances, the workman shall be deemed to be continuously his service and he is entitled to all the benefits and wages that he would have got had he not been terminated. The petitioner is still jobless and unemployed, crossing his age for an employment anywhere; the action of employer is illegal and unjustified and also unfair labour practice. Hence the petitioner is entitled to reinstatement with full back wages and consequential benefits.

7. Mr. U.P. Sinha, Learned Counsel for the workman petitioner having filed the photocopies of five rulings all of Hon'ble Apex Court in support of his case at the point of termination, and back wages, has relied upon them as under:

(i) Mohan Lal vs. Management of Bharat Electronics Ltd. Reported in MANU/SC/0327/1981, wherein, it has been held 'that the period of service accounted for 240 days within period of 12 months as continuous service for one year as defined u/s 25-B (2) is a prerequisite as condition precedent to retrenchment of workmen u/s 25F of the Industrial Disputes Act, 1947, and the case of the Appellant was not covered by exceptions, so his termination would constitute retrenchment; and the conditions of valid retrenchment were not satisfied, so termination was set aside and appeal was allowed (Para 18 & 20)'

(ii) Gammon India Ltd. Vs. Niranjan Dass, reported in MANU/SC/0237/1983 wherein, in reference to Sec 25 F of the I.D. Act, 1947, it has been held, 'at the point of validity of retrenchment of the workman under the law that it is not disputed that pre-requisite for a valid retrenchment as laid down in Section 25 F of the Act has not been complied with, and therefore retrenchment bringing about termination of service is ab initio void; hence the appeal is dismissed, thereby upholding the order of the Division Bench of the High Court concerned in LPA No. 25 1970, restoring the award of the Tribunal concerned which was set aside the award of the Tribunal concerned (Para 4)'.

(iii) Bhuwanesh Kumar Dwivedi Vs Hindalco Industries Ltd. reported in MANU/SC/0474/2014= 2014(2) SLJ 423 (SC), at the point of validity of dismissal, present appeal filed against order whereby High Court set aside order of reinstatement passed in favour of Appellant - Whether impugned order of setting aside the order of reinstatement was required any interference- held 'that Respondent could not produce any material evidence on

record before the Labour Court to show that the Appellant was employed for any particular project (s) on completion of which his service had been terminated- Respondent was not justified in contending that Appellant did not avertin his plaint of not being employed, did not hold since burden of proof that Appellant was gainfully employed post termination of his service was on Respondent. Respondent's claim that Appellant was gainfully employed somewhere was vague and could not be considered and accepted. Labour Court was correct on legal and factual principles in reinstating Appellant along with full back wages after setting aside order of termination. High Court had erred by exceeding its jurisdiction in holding that Appellant had, resigned by not joining his duty as badly worker and also awarding that retrenchment compensation will do justice to Appellant without assigning reasons which was wholly unsustainable in law. Therefore Appellant was entitled to full back wages from date of termination of his service till date of his reinstatement. Appeal allowed (Para 18, 29, 33, and 35)',

(iv) *Sandhya Vs. State of Maharastra* reported in MASU/SC/0553/2014=2014(3)SLJ(SC), at the point of denial to regularization, wherein impugned order denied regularization of Appellant's service on ground of being not in employment, hence present appeal-whether in view of Government Resolution (GR), regularization of service could be granted to Appellant-Held, 'impugned order misguided itself by holding that Appellant was not in service and was not working on date of GR prior to which certain unpaid candidates including Appellant were terminated by Respondents. Such order of termination was set aside by the Tribunal and Respondents were directed to consider case of Appellant for regularization in terms of GR. As termination order was set aside, Appellant should have been deemed to be continued in service even when GR was issued.Hence,Appellant was entitled for regularization of service.Respdnts were directed to comply with Tribunal's order and regularize services of Appellant with retrospective effect. Impugned order set aside, and appeal allowed (Para 17 & 18)' and

(v) Lastly *Dipali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) & ors.* : reported in MANU/SC/0942/2013 2013-(4)SCT-1716(SC) at the point of service and entitlement of back wages - Wherein single Judge set aside direction given by School Tribunal for payment of back wages to Appellant on ground that Appellant had not proved factum of non-employment during intervening period. Hence, this appeal: Whether Appellant was entitled to wages for period during which she was forcibly kept out of service by Management of School. Held 'that in case of wrongful termination of service, reinstatement with continuity of service and back wages was normal rule. In present case, it was found that the

Management's decision to terminate Appellant's service was preceded by her suspension albeit without any reason. Even Division Bench of High Court declared that Appellant would be deemed to have rejoined her duty and entitled to consequential benefits. However, Management neither allowed Appellant to join duty nor paid wages, rather after making show of holding enquiry, management terminated Appellant from service. Tribunal found that action of Management to be wholly arbitrary and vitiated due to violation of rules of natural justice. Tribunal further found that allegations levelled against Appellant were frivolous. Tribunal also took cognizance of statement made on behalf of Appellant that she was not gainfully employed anywhere and this fact had not been controverted by Management, and ordered her reinstatement with full back wages. Though Single Judge agreed with Tribunal that action taken by Management to terminate Appellant's service was illegal, but set aside award of back wages. Thus, in doing so, Single Judge not only overlooked order passed by Division Bench, but also prohibits employee from taking employment elsewhere. Thus Single Judge committed grave error by interfering with order passed by Tribunal for payment of back wages. Hence order of Single Judge was set aside and order passed by Tribunal was restored. Management should pay full back wages to Appellant. Appeal allowed.(Para 18,19 & 1)' Ratio Decidendi:

"In cases of wrongful termination of service, reinstatement with continuity of service and back wages is normal rule."

8. Whereas the contention of Sri A.K.Sen, Ld. Counsel for the OP/Management as per his written argument is that the OP/Management of Max Life Insurance Company (hereinafter referred to as MLI) at Dhanbad Branch is carrying on the business of the Life Insurance etc. Petitioner Ritesh Kumar Sinha was appointed as Executive -Accounts and Administrative for the work of supervisory and managerial work by nature in the service of the MLI firstly at Gaya on 01.09.2008 as per the Appointment agreement dt.01.09.2008 (Ext.W.1) and the terms and conditions of the Company under the signature of petitioner (marked as Ext.M.I on admission). The M LI as per clause 7 of the terms and conditions of the employment (Ext.M.1) has the right to transfer the employee to any location in India. When there was a vacancy in Dhanbad Office of the Management, the petitioner being the native of Dhanbad District was transferred by the Management from Gaya to Dhanbad *w.e.f.* 01.02.2009.In the month of Jan,2011 when Branch Head at Dhanbad Office called the petitioner and informed of his transfer from Dhabad to Bilaspur Office *w.e.f.* 17.01.011, instructing to report on that day, but the petitioner denied to accept his transfer letter and in defiance to the instructions of the Manager, he immediately left the Dhanbad Office, though he kept on coming to the office,

marking his attendance and drawing his salary till Feb, 2011 (Ext.M.2). Since the petitioner refused to join the new office as per the transfer letter, the Company did not pay him salary after Feb, 2011, though he had forcibly marked his attendance up to 17th March, 2011 (Ext.2/1). The stoppage of marking his attendance by the workman/petitioner naturally happened due to his transfer from Dhanbad to Bilaspur.

Further it has been contended on behalf of the OP/Management that since the workman/petitioner was performing the work purely of supervisory and managerial in nature, but not manual and clerical in any way, and he was drawing salary Rs. 10,000/- p.m., he was not a workman under Sec.2(s) of the I.D. Act, 1947, as he was appointed as the Operational Executive having his work profile largely of supervisory and managerial in nature. Thus, the instant Reference is not sustainable in the eye of law and likewise petitioner is not entitled to any relief.

9 After going through the arguments of both the parties, on perusal of the materials available on the case record, it appears no dispute between the petitioner and the OP/Management as the employee-employer respectively. The fact that Dhanbad is the native place of the workman/petitioner who was transferred from Gaya to Dhanbad on 01.02.2009, and the workman/petitioner was initially appointed as the Executive -Accounts and Administration- in the service of the Company at Gaya Branch, on 01.09.2008.

10. Response to the Reference needs determination of the two points as under:—

Point No.1:— Whether the workman /petitioner is really a workman as defined under Sec.2 (s) of the I.D. Act, 1947.

In that regard, it is acknowledged fact that there is transaction of cash, cheques, and draft etc. in the office of the Management as usual in course of the conduct of the Insurance Company/Management. The financial transactions are also maintained as per the Ledger and manually through the Electronic process. It is also an indisputable fact that the workman used to maintain the ledger, also used to collect cash, D/draft and cheques from the customers as well as the job of entertaining the customers too, but in the instant case, no OP/Management could produce any documents as proof over the point that the petitioner's work was of managerial or supervisory in nature. Even the terms and conditions of the employment with the workman do not whisper the nature of his supervisory or managerial work in the office of the Management. He was simply working as the Executive -Accounts and Administration. Under such circumstances, the workman/petitioner is undoubtedly found to a workman under the said provision of the I.D. Act. The point is answered in affirmative.

Point No.2:— Whether the workman has been terminated from the service of the Company, w.e.f. 13.1.2010 now replaced with 17.03.2011 as per Corrigendum dt. 15.10.2013.

In the instant case, the petitioner has no pleaded evidence at point of the Transfer Order having been not served upon him except his denial to disobedience of the transfer order issued by the Authority from Dhanbad to Bilaspur. The photocopy of the petitioner's hand over charge dt. 13.1.2011 (Ext.W.7) to the Branch Manager of the Company clearly proves that the workman willingly handed over the charge of Safe and other materials including Cash amounts in compliance with the Order of the Branch Manager. But the workman appears to have lodged the "Snaha" application with the local Police Station on the same day i.e. 13th June, 2011 (Ext.W.5) by alleging against the Branch Manager Mr. Ajay Tarpidia and Shri Shrijiv Banerjee to have threatened him to dismiss in case of non resignation by him. Subsequently the petitioner sent his e-mail of complaint to H.R/Sr. Manager and CEO on 14.1.2001 to that effect (Ext.W.2). The petitioner had got response through e-mail dt. 14.1.2011 from the Zonal H.R. (Ext.W.3). Thereafter the workman appears to have made the complaint through his e-mail dt. 17.03.2011 to the H.R Head concerned about the blocking of his total I.D portal (Ext. W.4). Consequently the petitioner filed the complaint to the Dy.C.L.C. (C), Jagjivan Nagar, Dhanbad in apprehension of alleged threatened termination of his service (Ext.W.6 in four sheets) dt. 24.01.2011. Lastly the workman/Petitioner gave information to the RLC (C), Dhanbad about the further alleged action of the OP/Management about disallowing him to sign his attendance Register amounting to violation of Sec.22(2)(d) and Sec.33 of the I.D. Act, 1947 and also about the blockage of his on-line-attendance portal as per his three letters dt. 14.03.2011, 18.03.2011 and 13.04.2011 (Ext.W.7/1 - 3 series). But the "Snaha" application of the petitioner dt. 13.01.2011 does not mention any fact of his confinement in the Bank for his forceful resignation.

It is merely an application under the initial of the Authority concerned and seal of the Bank More Police Station, Dhanbad about his allegation against the Management. MWI Manish Dhar has affirmed in his cross examination that since he had joined as the Asst. Branch Manager in the month of June, 2011, now the Branch Manager in the Company at Dhanbad and he was made In-charge of the Management of the company at Dhanbad, following his promotion of M. Tarpidia as Branch Manager to the post of Regional Manager at Bhuwaneswar for Orissa and Chattisgarh. He had not seen the transfer letter of the workman nor his release order. According to him, the workman/petitioner had forcibly marked his attendance for the month of March, 2011 as per the photocopy of the Attendance Register for March, 2011 (Ext.M.2/1). It proves

that the petitioner had marked his attendance upto 17th March, 2011, though he had already handed over the charge as his charge report on the very 13th Jan, 2011 (Ext.W.7).

11. The workman had worked at the office of the Company at Dhanbad for 2 and 1/2 years. The silence of the workman petitioner over his transfer from his native district Dhanbad to Bilaspur clears bodes well his factual transfer to Bilaspur, so he had though made over his charge on the very 13th Jan, 2011, and he had to report his duty at Bilaspur based office of the OP/Management on 17th Jan, 2011, yet he preferred to engage himself in making out his instant case of his termination on the basis of alleged threatful coercion upon the petitioner by the OP/Management to resign his service. In such situation, there is no termination/retranchment u/s 2(00), as there was no need for any disciplinary action against him even u/s 25 F of the I.D. Act, 1947. Rather the case of the petitioner as it stands before me is the case of abandonment of his service amounting to self-termination of his employment by disenthling himself from any statutory or other compensation commencing from the first day of his absence from work as provided under the clause 6- General- of the terms and conditions of the Employment with MNYL dt. Sept., 1, 2008 (Ext.W.1). Excess payment of the salary to the workman petitioner upto the month of Feb. 2011 was virtually ex-gratia to him so that he might join his assignment at the office of the Management at Bilaspur. The appointment of the workman petitioner is governed by the aforesaid terms and conditions of his appointment which are binding upon the petitioner, who is the workman of the Private Financial Banking Company, ought be a person of full integrity and disciplined, the financial transactions are too sensitive in the public at large, If such workman goes indisciplined and desperate, it commutatively affects the financial transactions of the Company. The employment of the petitioner with the O.P./Management as per the terms and conditions of the said agreement was virtually a civil contract.

12. Having considered the overall facts of the reference, I came to the conclusion that the workman petitioner has not been terminated or retrenched in the terms of Sec. 2(00) of the I.D. Act, 1947, rather he had himself abandoned his services towards the private Financial Company for the reason best known to him. Hence in such situation of the case under adjudication, none of the aforesaid rulings cited on behalf of the workman holds good, as the instant case has no termination under the aforesaid provisions of the I.D. Act., 1947.

13. Hence, it is, hereby, responded and accordingly awarded that there was not any alleged action of the

Management of Max New York Life Insurance Company Ltd., Kolkata, in terminating the services of Sri Ritesh Kumar Sinha w.e.f. 13.1.2010 replaced with 17.03.2011 (as per Corrigendum dt.15.10.2013), so no question of the action of the Management as fair, legal and justified in that regard arises, Rather the workman petitioner had himself abandoned his services towards the Management of the private company as per the clause 6 General- of the terms and conditions of his employment dt. Sept., 1, 2008 (Ext.W.2) for his unauthorized presence upto 17th March, 2011 which is equal to unauthorized absence from the very first day of March, 2011 despite his already transfer from his native place Dhanbad to Bilaspur. Such willful abandonment of service by the workman petitioner as per the very terms and conditions of his employment (Ext.W.1) under his signature amounts to his wilful termination from the services of the Company w.e.f. the very 1st March, 2011, forfeiting any statutory compensation. for the reason of his self-desertion of the services of the reputed Financial Company of India, The workman is not entitled to any relief.

KISHORI RAM, Presiding Officer

नई दिल्ली, 12 अक्टूबर, 2015

का०आ० 1991.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार मेसर्स लाईफ इंश्योरेंस कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 43/2003) प्रकाशित करती है, जो केन्द्रीय सरकार को 06/10/2015 को प्राप्त हुआ था।

[सं० एल-17012/16/2003-आईआर(बी-1)]

नवीन कपूर, अवर सचिव

New Delhi, the 12th October, 2015

S.O. 1991.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 43/2003) of the Central Government Industrial Tribunal/Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of M/s LIC of India and their workman, which was received by the Central Government on 06/10/2015.

[No. L-17012/16/2003-IR(B-I)]

NAVEEN KAPOOR, Under Secy.

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
AT KOLKATA****Reference No. 43 of 2003****Parties:** Employers in relation to the management of LIC
of India**AND**

Their workmen.

Present: JUSTICE DIPAK SAHARAY,
Presiding Officer**Appearance:**On behalf of the : Mr. T. Chowdhury, Ld. Counsel
led by

Management : Mr. N.K. Mehta, Ld. Counsel.

On behalf of the : Mr. P. Mukherjee, Ld. Counsel.
Workmen

State: West Bengal. Industry: Insurance.

Dated: 25th August, 2015.

AWARD

By Order No. L-17012/16/2003-IR(B-I) dated 27.11.2003 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Life Insurance Corporation of India, Kolkata is justified in terminating the services of temporary/casual workman Mr. Suprabhat Saha with effect from 5-11-2002 without conducting enquiry, without following any principles of natural justice and violation of provisions of Section 25-F/25-N of the I.D. Act? if not, what relief he is entitled?"

2. Bereft of all unnecessary details, the case of the concerned workman is as follows:

The management/LIC appointed the concerned workman in September, 1993 as Class-IV employee at Bhabanipur Branch of LIC and since then he had been working continuously without any interruption till the illegal termination of his service on 05.11.2002. From April 1994 his pay was fixed at the minimum of the pay scale for Class-IV employees and accordingly he had been receiving his monthly salary under salary head of account of the Corporation. It is alleged that the workman was illegally terminated without showing any reason. It is further contended that during conciliation proceeding before the Assistant Labour Commissioner the workman came to know that on 23.08.2001 while he and Administrative Officer

Shri Subrata Bhattacharjee were working in the cash enclosure, one leather bag containing cash and cheques were found missing and according to the management the said incident of mysterious disappearance of leather bag took place on account of his carelessness, negligence and irresponsibility. Since several requests of the workman for reinstatement of his service were not considered, he raised industrial dispute. Hence this reference.

3. The management/LIC has contested the case by filing written statement contending *inter alia* that the workman was engaged on daily wage basis and was working as such at Bhabanipur Branch under K.M.D.O.II. On 23.08.2001 while he was working inside cash enclosure with the Administrative Officer, Shri Subrata Bhattacharjee, Shri Bhattacharjee left the cash enclosure entrusting Shri Saha to look after the leather cash bag containing cash of Rs. 2,37,727 and cheques for Rs. 3,03,317.60. But Shri Saha also left the cash enclosure after departure of Shri Bhattacharjee leaving the said cash bag unguarded. As a result the said bag was lost. It is alleged that the said incident took place due to the irresponsible action of Shri Saha which is nothing but dereliction of his duties and accordingly he was terminated on 05.11.2002 as the management lost confidence in the workman. It is also alleged that Shri Saha was working on daily wage basis and was not appointed against any sanctioned post and that the worker working on daily wages basis has no right to claim reinstatement or continuity of service. Accordingly it is prayed that the instant reference may be disposed of in favour of the management.

4. In this case the workman in order to prove his case has examined himself as WW- 01 and has proved 13 documents marked Exhibits W-01 to W-13.

5. Similarly the management in support of its case has examined 3 witnesses and has proved 3 documents marked Exhibits M-01 to M-03.

6. It is the contention of the workman that he was appointed by the LIC as Class-IV employee and was working as a Peon at Bhabanipur Branch of LIC. On the other hand, according to the management the concerned workman was engaged as casual worker by the local management of LIC.

7. Now from the evidence of the workman (WW-01) it is evident that the management did not issue any appointment letter to the workman. His oral testimony goes to show that no formalities was observed at the time of appointment of the workman. There is also nothing on record to establish that the workman was appointed against permanent and/or sanctioned vacancy.

8. It is the contention of the management as it appears from the written statement that the workman was engaged on daily wage basis in September, 1993 and he was terminated on 05.11.2001 as the management lost confidence in him.

9. Now, from the pleadings of the parties coupled with the oral evidence of the parties and the documents marked Ext. W-07 series (vouchers for payment), Ext. W-08 (statement of payment), Ext. W-09 (Employees Earning Record), Ext. W-10 and Ext. W-11 (Attendance Register) it appears that the concerned workman had been working continuously from September, 1993 till his termination on 05.11.2001 and he used to get his wages month by month regularly.

10. From Ext. M-01 it appears that after the mysterious disappearance of cash and cheques, one preliminary enquiry was held and an enquiry report was submitted. From the said report it appears that during such preliminary enquiry it was found that there was negligence on the part of the workman who was daily rated Peon.

11. So it appears that after enquiry when it was ascertained that due to negligence of the workman, Shri Saha, the LIC suffered huge amount of loss, he was terminated as the management lost confidence in him. But such termination was made without holding any domestic enquiry.

12. From the evidence, both oral and documentary and the discussion made above, it also appears that the concerned workman who was casual Class-IV employee, was in continuous service for about 10 years. But there is nothing on record to show that provision of Section 25F of the Industrial Disputes Act, 1947 was complied with at the time of termination of service of the workman.

13. In this case the concerned workman was terminated from service as the management lost its confidence in him for his alleged irresponsibilities and carelessness. But the pleadings and evidence (both oral and documentary) of the management do not go to show that before termination of his service domestic enquiry was held against him.

14. In this connection, it is desirable to mention the decision reported in (1985) 2 Supreme Court Cases 727 (paragraph 8) wherein it has been held that:

"It is difficult to agree with the findings of the Labour Court that when service is terminated on the basis of loss of confidence the order does not amount to one with stigma and does not warrant a proceeding contemplated by law preceding termination. Want of confidence in an employee does point out to an adverse facet in his character as the true meaning of the allegation is that the employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. In any view of the matter this amounts to a dereliction on the part of the workman and, therefore, the stand taken by the Management that termination for loss of confidence does not amount to a stigma has to be repelled, in our opinion it is

not necessary to support our conclusion by reference to precedents or textual opinion as a commonsense assessment of the matter is sufficient to dispose of this aspect. 'Retrenchment' is defined in Section 2(oo) of the Industrial Disputes Act and excludes termination of service by the employer as a punishment inflicted by way of disciplinary action. If the termination in the instant case is held to be grounded upon conduct attaching stigma to the appellant, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Admittedly this has not been done. Therefore, the order of termination is vitiated in law and cannot be sustained."

15. Considering the facts and circumstances of the case, evidence on record and the decision of the Hon'ble Supreme Court it appears that the termination of the workman from the service by the management without any domestic enquiry and without any adherence to the provision of Section 25F of the Act was neither proper nor justified.

16. From the decisions of the Hon'ble Supreme Court viz. 1978 Lab. I.C. 1667 and 2013 (139) FLR 541 it appears that in case of illegal termination of service, reinstatement with continuity of service and back wages are normal rule.

17. Now it is to be considered whether or not the workman is entitled to be reinstated in service. In this context it is necessary to refer to the decision reported in (1985) 2 Supreme Court Cases 727 (paragraph 9 and 10) wherein it has been held that:

"9. Ordinarily, when the order of termination is quashed a declaration follows that the workman continues to be in employment and is, therefore, reinstated in service with full back wages as was held by this Court in Hindustan Tin Works (Private) Ltd. v. Employees. This Court held in Jitendra Singh Rathor v. Shri Daidyanath Ayurved Bhawan Ltd. that under Section 11-A of the Act advisedly wide discretion has been vested in the Tribunal in the matter of awarding relief according to circumstances of the case. In Hindustan Steels Ltd., Rourkela v. A.K. Roy, this Court has held that the Labour Court has discretion to award compensation instead of reinstatement if the circumstances of a particular case make reinstatement inexpedient or improper. In this case it has been the stand of the respondent that the Management had lost confidence in the appellant and there has been some pleading about the importance of the role of confidence in the business set-up of the respondent. Without examining the tenability of the stand on loss of confidence as a defence to reinstatement and accepting the allegations advanced by the respondent that there

has been los of confidence, we are of the view that while the termination of service of the appellant is held to be bad, he may not be reinstated in service. On the other hand he should be adequately compensated.

10. The quantum of compensation has now to be ascertained. Ordinarily, the appellant would have gone back into service with full back wages. Admittedly he has been out of employment from March 1974. If he had gone back into service he would have been entitled to back wages of a little more than 11 years. In computing compensation this aspect has to be kept in view. If he was restored to service he would have been assured of employment for a further term of years. Keeping this as also other relevant aspects in view, we quantify the compensation payable to the appellant at Rs 2 lacs. In almost similar circumstances in respect of two employees working under the Lufthansa German Airlines, compensation of Rs. 2 lacs for each worker was fixed by this Court in Civil Appeal No. 650 of 1982 disposed of by us on April 9, 1985. Counsel for the appellant has undertaken to file a statement showing the spread-over of the compensation from the date of the order of termination of service till the end of the present financial year, within a week from today. After the statement is filed the some be placed for further directions."

18. It has already been discussed that the management lost its confidence in the workman for his alleged dereliction of duty *i.e.*, carelessness and irresponsibility. Though the allegation of loss of confidence has not been established by any domestic enquiry, yet in the pleadings of the parties there is inkling of loss of confidence of the management for any reason whatsoever. In such circumstances it will not be expedient to reinstate the workman against the will of the management and in such cases adequate compensation would be an alternative to reinstatement. And in coming to this decision this Tribunal is fortified by the decision of the Hon'ble Supreme Court as already referred to in paragraph 17 above.

19. Now the question arises as to what would be the just and proper amount of compensation. In this regard the foregoing decisions of the Hon'ble Supreme Court as mentioned in paragraph 17 of this Award may be taken as a guideline.

20. There is pecuniary loss as well as non-pecuniary loss. Non-pecuniary loss *i.e.*, sufferings, loss of earnings for the rest of the life, non-performance of the obligation towards the family cannot be measured in terms of money. So by applying the rule of thumb the total compensation for pecuniary and non-pecuniary loss is fixed at Rs. 8,00,000 (Rupees eight lac) only.

21. The instant order of reference is accordingly answered in the negative. The workman is entitled to get compensation of Rs. 8,00,000 (Rupees eight lac).

22. Award is passed accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,

The 25th August, 2015.

नई दिल्ली, 14 अक्टूबर, 2015

का०आ० 1992.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे प्रबंध तंत्र के सबद्ध नियोजको और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट संदर्भ संख्या (34/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं० एल-41011/34/2014-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O. 1992.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/2014) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 14/10/2015.

[No.L-41011/34/2014-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL - CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR,
Presiding Officer

I.D. No. 34/2014

Ref. No. L-41011/34/2014-IR(B-1) dated: 23.04.2014

BETWEEN

Anchal Sangthan Secretary
Rail Sevak Sangh
C/o Shri D.P. Awasthi
49, Tilak Nagar
Lucknow.

(Espousing cause of Sri Hari Ram)

AND

1. Sr. Divisional Personnel Officer
North Eastern Railway
DRM Office, Ashok Marg
Lucknow.
2. The Chief Medical Superintendent
North Eastern Railway
Gonda (UP)

AWARD

1. By order No. L-41011/34/2014-IR(B-1) dated: 23.04.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Anchal Sangthan Secretary, Rail Sevak Sangh, C/o Shri D. P. Awasthi, 49, Tilak Nagar, Lucknow and Sr. Divisional Personnel Officer, North Eastern Railway, DRM Office, Ashok Marg, Lucknow & the Chief Medical Superintendent, North Eastern Railway, Gonda (UP) for adjudication.

2. The reference under adjudication is:

“क्या पूर्वोत्तर रेल प्रशासन, लखनऊ व गोंडा द्वारा श्री हरी राम पुत्र श्री पन्ना लाल, सफाईवाला को पुरानी पेंशन न देकर नई पेंशन दिया जाना न्यायोचित एवं वैध है” यदि नहीं तो कामगर किस राहत को पाने का हकदार है ?”

3. On receipt of the reference order the workman's union was issued registered notice to file his statement of claim complete with relevant documents, list of reliance and witnesses before Tribunal on 17.07.2014 with an advance copy to the opposite party. The Secretary of the workman's union appeared before this Tribunal and requested for a date for filing of statement of claim.

4. On successive dates the management also up Since the case was related to grant of old pension scheme instead of new pension scheme, the parties were advised to settle the dispute amicably through Lok Adalat. Accordingly, the case was taken up at Lok Adalat on 08.05.2015.

5. On 08.05.2015, Shri D.P. Awasthi, Secretary of the workman's union was present whereas the opposite parties were represented by Shri Upendra Kumar Sharma, Chief Welfare Officer.

6. The opposite party filed M-5, letter signed by Sri P.B. Prasad, Senior Divisional Personnel Officer, North Eastern Railway, Lucknow, enclosing circular No. 2012/F(E)III/I(I)/2 dated 29.10.2014 of the Railway Board. The management in letter M 5, referring circular dated 29.10.2014 has stated that the Railway Board, New Delhi vide their circular dated 29.10.2014 has directed to cover the employees who got temporary status prior to 01.01.2004 may be covered under Old Pension Scheme.

7. A copy of the M-5 was furnished to the workman's union. The authorized representative of the workman's union sought time to consult the workman; and accordingly, the case was taken up on 28.08.2015 at Lok Adalat. The Authorized representative of the workman's union, Shri D.P. Awasthi after going through the contents of letter, M-5 and circular dated 29.10.2014 showed willingness to withdraw the present industrial dispute being claim settled; and made an endorsement thereupon as under:

"Since the relief claimed by the Union has been accepted by the Railway Management, further proceeding of this case may kindly be dropped."

8. In view of the submission/endorsement of the workman's union for dropping of the proceedings, there is no grievance left with the workman's union as the present industrial dispute pertains to non-grant of old pension to the workman by the railway management and the management of the railway has granted the same vide circular 2012/F(E)II 1/1(1)/2 dated 29.10.2014 of the Railway Board. Resultantly, the industrial dispute stands settled; and no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

9. Award as above.

RAKESH KUMAR, Presiding Officer

LUCKNOW.

24th September, 2015

नई दिल्ली, 14 अक्टूबर, 2015

कांआ 1993.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सतपुडा क्षेत्रीय ग्रामीण बैंक प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 84/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार का 14/10/2015 प्राप्त हुआ था।

[सं एल-12012/37/2007-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O. 1993.—In pursuance of Section 1917 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref.84/2007) of the Cent.Govt.Indus.Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Satpura Kshetriya Gramin Bank and their workmen, received by the Central Government on 14/10/2015.

[No. L-12012/37/2007- IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR****NO. CGIT/LC/R/84/2007**Shri Tulsiram Pardhi,
Village & PO Khara,
Distt. Balaghat (MP),
Balaghat

...Workman

VersusThe Chairman,
Satpura Kshetriya Gramin Bank,
Distt. Chhindwara

...Management

AWARD

Passed on this 31st day of August, 2015

1. As per letter dated 20-08-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No.1.-12012/37/2007-1R(B-I). The dispute under reference relates to:

"Whether the action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Tulsiram Pardhi is justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party workman submitted statement of claim at Page 6 to 6/4. Case of Ist party workman is that he was engaged as peon cum messenger by Branch Manager Khara branch on 30-5-89. Thereafter he was transferred to Kosmi Branch. He rendered his services in Bank from 30-5-89 to 27-11-03. That he was engaged on vacant sanctioned post after following due process by 2nd party No.2. He rendered his services diligently for more than a decade. That he was eligible for regularization of post of messenger cum peon considering his long continuous service. Workman had submitted representations to the Bank for regularization but were of no avail. Workman had filed Writ Petition 1095/02 before Hon'ble High Court, MP Jabalpur. The Writ Petition was disposed off on 20-3-02 allowing opportunity to raise his grievance before appropriate forum. Workman raised dispute through Union before conciliation authority under ID Act. During pendency of conciliation proceeding before ALC, Chhindwara, his services were dispensed with from 27-11-03 by the Bank without issuing order in writing. He was not served with notice or compensation in lieu of notice was not paid to him.

3. 1st party workman reiterates that he completed more than 240 days continuous service. He is covered as employee under Section 25 B of ID Act. the respondent Bank failed to follow guidelines and scheme for regularization of daily wage employees completing 240 days

service in a calendar year *i.e.* circular issued by NABARD dated 7-5-87 and circular by RBI dated 8-10-84. The case of 1st party workman as well as co-employee was put up by Union before Bank for implementation of above circular for regularization. Despite of agreement was raised upon between Union and Bank for unknown reasons. 2nd party Bank denied to implement the same. Letter dated 20-3-94 is relied. It is alleged that Bank despite need of regular staff on post of messenger cum peon adopted unfair labour practice de hors the principles of natural justice. In violation of Section 33(C) of ID Act, services of workman were terminated without notice. 2nd party continued practice of pick and choose the daily rated employees at their whims and fancies. 2nd party Bank violated section 25-F, G, H of ID Act as juniors to the workmen were retained in service even after discontinuation of service of 1st party workman. It is alleged that after discontinuing workman, other fresh persons were appointed in place of daily wagers. Policy of last come first go was not followed. Workman should have been given preference over others in case of new recruitment. The sponsored Bank of 2nd party Central Bank of India issued directions to all branches on 16-2-90 directing them to provide information of all daily wage employees who have completed 240 days continuous service in 12 months during the period 1-1-82 to 31-3-95 by Regional Office, Chhindwara. The direction was not complied. It is reiterated that during pendency of conciliation proceedings pertaining to regularization of services, workman was discontinued by the Bank in arbitrary manner. The board of directors taken decision to discharge services of employees during pendency of conciliation proceedings *vide* communication dated 20-11-03. Workman further submits that since his initial employment from 30-5-89 till 27-11-03, PF amount was deducted from his wages. The deduction of PF wages of workman clearly indicates that he worked more than 240 days in a calendar year. His services are terminated illegally. On such ground, workman prays for his reinstatement with full backwages.

4. 2nd party filed Written Statement opposing claim of workman. 2nd party raised preliminary objection that workman has committed theft of documents. All the documents relied by workman are denied. That Ist party is not workman. He was never appointed by the management. He was not sponsored through Employment Exchange. He did not undergo process of selection. The board has not sanctioned any such post. 2nd party has no policy to appoint any person contrary to the norms and rules. Their relationship of master servant between parties is denied. It is denied that workman was engaged by Branch Manager, Satpura Gramin Bank as peon cum messenger. It is denied that workman was transferred to Kosmi branch and has rendered continuous service from 6-12-99 to 27-11-03. It is denied that workman was engaged on vacant sanctioned post following due process. It is reiterated that workman

has not completed 240 days continuous service during any of the calendar year. He is not covered as employee under Section 25 B of ID Act. 2nd party denies that despite need of regular staff, the post of messenger cum peon, the Bank adopted unfair labour practice. It is denied that services of workman are dispensed with in violation of provisions of ID Act. It is submitted that provisions of ID Act are not applicable to present case. Termination of services of workman in violation of Section 25-F,G,H of ID Act is denied. That temporary need in the Bank depends on casual work which is fulfilled by any person who offers his service for required period. The principles of policy of last come first go is not attracted in the matter.

5. 2nd party denied that any circulars for regularization to temporary employee has been issued. Appointment of workman is denied. That deduction of PF is in compliance of provisions under PF Act. The prayer of workman is opposed. It is submitted that workman is not entitled to any relief.

6. 1st party workman filed rejoinder reiterating his contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) Whether the action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Tulsi Ram Pardhi is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order .

REASONS

8. Workman is challenging discontinuation of his service in violation of Section 25-F of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman says that he was engaged as sweeper cum messenger from 30-5-89 in Khara branch, Distt. Balaghat by Branch Manager on vacant post. He worked more than 240 days in each calendar year from 6-12-99 to 26-11-03, he was working in Hatta branch. He continuously worked more than 240 days during each of the year. His services were terminated without notice, he was not paid retrenchment compensation. He raised dispute for regularization of his service. During pendency of conciliation proceedings, his services were discontinued. After termination of his services, other daily wage employees were engaged by the Bank he was not given re-employment. He was paid wages at Collector rate Rs.82.77 per day. 12 % amount of wages was deducted towards PF during the year 1999 to 2003. In his cross-examination, workman says appointment letter was not given to him. He worked as sweeper cum messenger. Post was

not advertised. He did not tell his counsel but he submitted application for appointment to the Bank. He produced document about working in the Bank from 6-12-99 to 26-11-03. He produced documents about deduction of PF for above period. He has not produced document about vacant post.

9. Management's witness Snehlata Jaiswal filed affidavit of her evidence denying workman was appointed on vacant post as messenger on 30-5-89 in Khara branch. That workman had not worked in said branch during April 90 to October 94. Workman never worked for 240 days during any of the year. Workman never worked in Kosmi branch of the Bank during 6-12-99 to 26-9-03. 1st party - workman is not employee of the Bank. There was no question of issuing notice or payment of compensation to him. She has further stated that whenever any casual work occurs any person including applicant is available comes, Bank offers to do casual work. On completion of such casual work, his services automatically comes to end. In her cross-examination, management's witness says she was not working in Khara branch. Personally she did not know workman Tulsiram. During 89 to 99, she was working in control office at Mandla branch. She admits Khara branch was shifted to Kosmi branch. She did not remember name of Branch Manager during 1989 to 2000. Before filing affidavit, she discussed with Branch Manager Rajiv Batal. She did not remember whether it was oral discussion or documents were shown to her. That no post of peon/sweeper was sanctioned in Kosmi branch. Branch Manager was engaging persons for few hours for cleaning office. Its information was intermittently given to control office. Branch Manager was given authority to employ person as per need. She did not remember how many persons were engaged by Branch Manager from 1989 to 2000. She was unable to tell whether workman was engaged on daily wages from 1989 to 2003, for how many days workman was working in the branch on daily wages. She has stated in her affidavit that workman did not work for 240 days as per information given by Branch Manager Shri Rajesh. She did not know how many persons were engaged for cleaning. She did not know how payment was made to such persons. She did not remember whether she seen any record about payment made to daily wage employees for cleaning work. Attendance register is maintained in branch. She did not know what work presently is done by workman. On information received from Branch Manager, she stated workman is not unemployed. Branch Manager Rajesh is still working in the branch. She was unable to tell whether maintained acquaintance roll, payment register, PF register, payment vouchers during period 1989 to 2003.

10. Workman has produced documents. Exhibit W-1 settlement between Union and management of the Bank dated 20-3-94. Exhibit W-1 refers to circular issued by NABARD dated 7-5-87 and circular issued by RTI dated 8-8-84 for regularization of part time farrash. Process of

regularization of such part time farrash working for 240 days was started. Said process would be continued till 15-6-94. Seniority list would be published in 15-4-95. The employees who did not receive bonus orders for payment of bonus to them. Exhibit W-2 is Board of Directors taken decision to terminate services immediately of daily wage messengers. Other documents produced by workman are not proved by valid evidence.

11. The question arise about evidence of workman and management's witness. As discussed above, the management's witness has no personal knowledge. Her evidence is based on information received from Branch Manager who are still working in the branch. The documents maintained in the Bank payment register, AC statement, etc. which are maintained by the Bank are not produced.

12. The evidence of workman in cross-examination shows that workman has not produced documents about his working for 240 days. After discontinuation of his service, other persons engaged on daily wages. The documents relating to it are not produced. The management's witness in her cross-examination says she does not mean that workman was never working in the Bank. In cross-examination of workman, there is no suggestion that workman was not working, with Bank or he had not completed 240 days continuous service as stated in his affidavit. Evidence of workman on above point remained unchallenged in his cross-examination. Evidence of workman is supported by some documents and his evidence remained unchallenged on the point he had worked more than 240 days during any of the year. The evidence of management's witness is silent as to who was working as regular sweeper in the Bank. If no regular sweeper was working in the Bank, the Chairman of Bank had written letter to the General Manager Exhibit W-2 clearly stating that 54 persons have been working on daily wages or messengers in branches against regular vacancies since long corroborates evidence of the workman. I find no reason to disbelieve workman that he was continuously working in the Bank from 1989 to 2003. Evidence of workman is about completing more than 240 days continuous service finds corroboration from document Exhibit W-2. As per settlement Exhibit W-1, the process for regularization of part time employee, part time farrash was started and it was not to be completed till 5-4-94 as per the circulars issued by NABARD dated 7-5-87, circular issued by RBI 8-10-84. 2nd party has not produced those circulars. The evidence of management's witness is clear that workman was not served with notice. Retrenchment compensation was not paid to him, services of workman are terminated without violation of Section 25-F of ID Act.

13. Learned counsel for Ist party Shri A.K. Shashi relies on ratio held in case of Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and

another versus Sanjay Krishnarao Shrugare Amravati reported in 2008-II-CLR-301. Their Lordship dealing with Section 25-F, G, H of ID Act in case related to unfair labour practice under Maharashtra Act held that best possible evidence on the point of total service put I by the respondents not brought on record by the appellant. Appellant has to blame itself for this failure on its part. The Labour Judge and the Industrial Court did not err in drawing their conclusions.

In present case, though management's witness admits the record of various files is maintained in the Bank. It is not produced. It appear that management is suppressing the material evidence. From above reasons, it is clear that services of Ist party workman are terminated in violation of Section 25-F of ID Act. Therefore I record my finding in Point No. 1 in Negative.

14. Point No. 2- In view of my finding in Point No. 1 termination of Ist party is in violation of Section 25-F of ID Act, question remains for consideration whether workman is entitled for reinstatement with backwages. Though workman in his pleadings and evidence has referred to the circulars issued by NABARD and RBI relating to regulation of part time employees, those circulars are not produced on record, the term of reference pertain to regularization of workman rather it pertains to legality of termination of his service. From reasons dealing with Point No. 1, it is clear that Ist party workman was working continuously with 2nd party as peon/sweeper from 1989 to 2003 for about 12-13 years but post was not advertised. Workman was not issued appointment letter. Workman was engaged on daily wages. As per Exhibit W-2, 54 part time employees were working against sanctioned post for long period. The advice of General Manager was requested by the Chairman. Point w.r.t. the relief for reinstatement with backwages, Shri A.K. Shashi counsel for workman pointed out my attention to the award passed in R/88/2001 & R/9/2 to 17/12 & 1/13. Considering ratio held in various cases, in Para 28 of the award, it was observed that workman have worked for different period. The reinstatement with backwages is not automatic. The facts of each case needs to be considered. Workman who worked more than 2 years and workman working between 4-7 years needs different consideration. Workman who have completed 10 years service for long time deserves reinstatement. Workman working more than 7 years deserve compensation Rs. 50,000/- workman working about 4 years deserves compensation Rs. One Lakh. Same principle would be applied while dealing with the claim for reinstatement by workman. Workman was working with the 2nd party from 1990 to 2003 for about 13 years justified his claim for reinstatement.

15. Learned counsel for 2nd party Shri Pramesh Jain submitted written notes of argument opposing claim of workman for reinstatement that workman had not completed 240 days continuous service. Learned counsel relies on

ratio held in Case of BSNL versus Bhurumal reported in Civil Appeal No. 10957/2013. In Para 24 of the judgment, their Lordship considering ratio held in case of State of Karnataka versus Uma Devi 2006(4) SCC-1 observed thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated against after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay.

In Exhibit W-1, Union and management had arrived at settlement for regularization of part time employees on 15-6-94. In Exhibit W-2 Chairman of the Bank has requested advice of General Manager that 54 part time employees were working in the Bank since long against sanctioned post. The ratio in above cited case cannot be applied to case at hand as the facts are not comparable.

Learned counsel for 2nd party Shri Pramesh Jain also relies on ratio held in case of Tapash Kumar versus BSNL reported in 2014 AIR SCW 5816. Their Lordship have considered when reinstatement can be ordered. The order of Division Bench awarding compensation in lieu of reinstatement was set aside. In para-5 of the judgment, their Lordship held it is no doubt true that Court may pass an order substituting reinstatement by awarding compensation but the same has to be based on justifiable grounds *i.e.* (1) where the industry is closed, (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and (iv) when he has lost confidence of the management to discharge duties.

In present case, management's witness says any chargesheet for misconduct was not issued to the workman. The Bank is not closed. Workman have not attained age of superannuation. The ratio held in above cited case does not support the contentions of 2nd party.

Learned counsel for 2nd party also relies on ratio held in case of Mahboob Deepak versus Nagar Panchayat Gajraula reported in Appeal No. 5875 of 2007. In para 2 of the judgment, their Lordship discussed it is now well settled by a catena of decisions of this court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation.

Ratio held in case 2014 AIR SCW 5816 holds the filed that reinstatement can be refused only on 4 grounds discussed above. Therefore ratio in above cited case cannot be beneficially applied. For same reasons, ratio held

in case of MP Administration vrs. Tribhuban reported in 2007(5) Scale 397 cannot be beneficially applied to case at hand.

16. At the time of argument, learned counsel for workman Shri A.K. Shashi submits that workman is not interested in backwages rather workman be provided reinstatement without backwages. For the reasons discussed above, it would be appropriate to direct reinstatement of workman considering he was working with 2nd party for about 3 years on daily wages. Despite settlement Exhibit W-1 & W-2 clearly stating that 54 part time employees were working against sanctioned post for long period, it is not known what advice was given by General Manager to said workman, reinstatement of workman would be appropriate. Accordingly I record my finding in Point No. 2.

17. In the result, award is passed as under:—

- (1) The action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Tulsi Ram Pardhi is not proper and legal.
- (2) Termination of workman is set-aside. 2nd party is directed to reinstatement workman without backwages.
- (3) Parties to bear their respective costs.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2015

का० आ० 1994—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 77/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14.10.2015 को प्राप्त हुआ था।

[सं० एल-12012/43/2014-आई आर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O. 1994.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 77/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 14/10/2015.

[No. L-12012/43/2014-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE
BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
CHENNAI

Friday, the 18th September, 2015

Present: K.P. PRASANNA KUMARI,

Presiding Officer

Industrial Dispute No. 77/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of State Bank of India and their workman].

BETWEEN

Sri B. Ramalingam: : 1st Party/Petitioner

AND

The Regional Manager : 2nd Party/
 State Bank of India, RBO-II Respondent
 Administrative Unit, 2, Dr. Ambedkar road

Madurai-625002

Appearance:

For the 1st Party/Petitioner : M/s. Law Square,
 Advocates

For the 2nd Party/Respondent : Sri S. Ravindran, S.
 Bazeer Ahmad,
 Advocates

AWARD

The Central Government, Ministry of Labour & Employment *vide* its Order No. L-12012/43/2014-IR (B.1) dated 17.09.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

"Whether the action of the management of State Bank of India in dismissing the services of Sri B. Ramalingam is legal and justified? If not, to what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 77/2014 and issued notices to both sides. Both sides have entered appearance through their counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in reply to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has joined as an Assistant in State Bank of India on 01.08.1984. He had been discharging his duties to the utmost satisfaction of his superiors. He was suspended from service by proceedings dated 13.07.2002

alleging that he has committed certain irregularities while he was working at Ramanathapuram Branch. Subsequently, a Show Cause Notice was issued to him alleging that he had fraudulently withdrawn Rs. 54,000/- from the account of Sathya Bama, a customer of the Ramanathapuram Town Branch by using the bank withdrawal from obtained from her and used the cash for his personal benefit without the knowledge of the customer. It was also alleged that he had given the closed SB Pass Book of Sathya Bama to her without updating the Pass Book. The petitioner had refused the charges orally. The Second Respondent appointed an Enquiry Officer to conduct enquiry on the allegations against the petitioner. The enquiry was not conducted in a fair and proper manner. The petitioner has examined himself as witness on his side and denied all the four charges leveled against him. He has also denied the confession letter allegedly obtained from him under coercion by the Management representative. He had given a detailed representation on 16.01.2004 denying all the allegations leveled against him. The Enquiry Officer erroneously found that the charges leveled against the petitioner are proved. The petitioner was called for a personal hearing, but the explanation given by the petitioner was not accepted. On 27.04.2004 the petitioner was dismissed from service with immediate effect. The appeal filed by the petitioner against the order of dismissal was dismissed. The dispute is raised accordingly. An order may be passed directing the Respondent to reinstate the petitioner in service with backwages, continuity of service and other benefits.

4. The Respondent has filed Counter Statement contending as below:

The Respondent Bank is a premier Banking Corporation. The employees of the bank dealing with public money should maintain high standards of ethics, honesty and diligence. Any conduct of the bank employee prejudicial to the interests of the bank un-becoming of a bank employee would be dealt with severely. The petitioner was working as Assistant in Ramanathapuram Town Branch of the Respondent. Sathya Bama, one of the customers of the Bank had a savings bank account in the branch. On 14.05.2001 she had paid Rs. 3.00 lakhs and obtained six special term deposit receipts, each valued at Rs. 50,000/-. The deposit receipts were due for payment on 14.05.2002. On 07.05.2002 Sathya Bama came to the branch and submitted a format for closing her Savings Bank Account. She also handed over six deposit receipts to the petitioner for renewal. The petitioner informed her that it could be done only on 14.05.2002 and agreed to keep the receipts in his possession and return them to her on 14.05.2002 after duly renewing the same. On 09.05.2002 the petitioner closed the account of Sathya Bama and handed over the Pass Book to her. On 14.05.2002 he handed over six deposit receipts duly renewed. On 10.07.2002 Sathya Bama came to the branch with two of the deposit receipts and gave a letter for foreclosure of two deposit receipts. On verification

of the receipts she was informed that one of the receipts was not genuine and amount could not be given to her on this. A perusal of her accounts revealed that on 07.05.2002, Rs. 54,299/- was credited to her account and Rs. 54,300/- was withdrawn on the same day. Sathyabama gave a written complaint to the bank stating that she had handed over six deposit receipts and a format to close the SB Account to the petitioner on 07.05.2002 and that she had not withdrawn any amount from her SB Account on 07.05.2002. On receipt of the complaint the petitioner's ledger folio was scrutinized and it showed that Rs. 54,300/- had been withdrawn from her account on 07.05.2002 after crediting Rs. 54,299/- on transfer. This was done by the petitioner foreclosing Deposit Receipt No. 727324 in the name of Sathyabama. The conduct of the petitioner was a grave misconduct. He was charge sheeted for misconduct and an enquiry was conducted. Nine documents were marked in the enquiry proceedings. The petitioner was found guilty of the charge leveled against him and punishment of dismissal from service was imposed on him. The petitioner had challenged the order by a Writ Petition before the High Court of Madras and this was withdrawn on 06.04.2011. The dispute is raised thereafter. The allegation that the enquiry was not conducted in accordance with the principles of natural justice is not correct. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W14 and Ext. M1 to Ext M13.

7. The points for consideration are:

- (i) Whether the action of the management of State Bank of India in dismissing the petitioner from service is legal and justified?
- (ii) What is the relief, if any to which the petitioner is entitled?

The Points

8. As could be seen, that the petitioner who had joined State Bank of India as Assistant in 1984 was dismissed from service on 27.04.2004 on the basis of an enquiry report on charge of certain misconducts alleged against him. Ext.W2 is the Charge Memo issued to the petitioner on 04.06.2003. The petitioner was suspended from service by Ext.W1 order on 31.07.2002 itself based on the irregularities allegedly committed by him. There are four charges in the Charge Memo issued to the petitioner. As per the first charge, on 07.05.2002 the petitioner had obtained six deposit receipts discharged on the reverse from Sathyabama, the holder of the deposit receipts along with a request letter for closure of her SB Account and also

a blank SB withdrawal form. The petitioner is said to have unauthorizedly utilized the request letter and closed one of the deposit receipts bearing number 727324 for an amount of Rs. 54,299/-. Thus he is said to have betrayed the trust reposed on him by the customer and acted detrimental to the interests of the bank. As per the second charge, on the same day the petitioner had fraudulently withdrawn Rs. 54,300/- from the SB Account of Sathya Bama using the blank withdrawal form obtained from her and received cash for the same and had utilized the amount for his personal benefit without the knowledge of the customer. The third charge states that he had prepared a deposit receipt bearing number 815987 for Rs. 54,367/- in the name of Sathya Bama by removing a form for deposit receipt from the concerned Assistant without his knowledge and forged the signature of the Assistant in the deposit receipt. The fourth charge is that on 14.05.2002 he had delivered the closed SB Pass Book to Sathya Bama without updating the transactions and without proper authentication with the intention to conceal the fact of withdrawal of Rs. 54,300/- from the account on 07.05.2002.

9. Notice of disciplinary proceedings has been issued to the petitioner and he had participated in the disciplinary proceedings throughout through a Defense Representative. In the Claim Statement the petitioner has raised a contention that the enquiry has not been conducted in a fair and proper manner. Because of this contention the issue has been considered initially and I have entered into a preliminary finding that the conduct of the enquiry was fair and proper.

10. In the enquiry the management did not examine any witnesses. Nine documents were produced to establish the case. Though the petitioner participated in the enquiry he did not adduce any evidence either oral or documentary. In the Claim Statement as well as in the Proof Affidavit filed by him, the petitioner has claimed that he has examined himself as witness on his side and denied all the charges leveled against him. This statement is factually incorrect as I find that he has not given any evidence in the enquiry proceedings.

11. The Enquiry Officer has entered a finding based on the documents produced and the written submissions made by either side based on this. It has been argued on behalf of the petitioner that due to non-examination of Sathya Bama in whose account irregularity has been allegedly committed itself, the case of the Management is to be rejected. The Management has marked a complaint said to have been given by Sathya Bama regarding the irregularities committed by the petitioner. This has been marked as Ext. M8 before this Court. The case of the Management is that on 14.05.2002 Sathya Bama went back with the renewed deposit receipts that were handed over by the petitioner and came back later for foreclosure of two of the deposit receipts. On scrutiny, it was noticed that one of the receipts was not registered with the Bank at all. Only

then it was realized that the petitioner had committed the irregularities and Sathya Bama had given the complaint consequently. Of course there is sufficient force in the argument advanced on behalf of the petitioner that in the absence of examination of Sathya Bama the complaint given by her could not have been accepted in evidence or relief upon by the Enquiry Officer. The counsel for the Respondent has of course argued that the document has been marked without any objection and the petitioner could not raise any objection regarding the marking of the document later. However, mere marking of the document could not be proof of the document itself. It was incumbent upon the Management to examine the complainant.

12. It has been argued on behalf of the Respondent that there is sufficient material available to show that the petitioner has committed the irregularities alleged. It could be seen from the enquiry proceedings that none of the other documents other than the complaint were disputed by the petitioner. Ext.M1 is the letter given by Sathya Bama to close the account. The account number is seen given at the top and also inside the body of the document. The number at the top is seen struck off and the deposit receipt number which was foreclosed on 07.05.2002 is seen written below this. However, the account number shown in the body of the document remained unchanged. The case seems to be that this was done by the petitioner after he obtained it from Sathya Bama. He is said to have utilized the blank withdrawal form given by her to withdraw the amount which has been credited to her account after foreclosing the deposit receipt. Ext.M2 is the deposit receipt number 727324 dated 14.05.2001 issued to Sathya Bama. Ext.M3 is the withdrawal slip for Rs. 54,300/-. Ext.M4 is the deposit receipt number 815987 in the name of Sathya Bama. Ext.M5 is the copy of the Pass Book of Sathya Bama which shows that the account was closed on 09.05.2002. The case is that the petitioner closed the account on this date without updating the Pass Book to conceal the withdrawal of Rs. 54,300/- from her account and handed it over to her on 14.05.2002 on which date she approached the petitioner for renewed deposit receipts. Ext.M6 is the extract of ledger account of Sathya Bama showing that Rs. 54,299/- was credited to the account by transfer and Rs. 54,300/- has been withdrawn. Ext.M7 is the letter written by Sathya Bama to foreclose the two deposit receipts.

13. What is the evidence to show that irregularities were committed by the petitioner? Ext.W2 Charge Memo was issued to the petitioner. He was asked to submit his statement of defence within 15 days of receipt of the same. However, the petitioner has not submitted any written explanation to the management in answer to the Charge Memo issued to him. His case in the Claim Statement is that he has orally denied the allegations. However, apparently, before enquiry was started, he did not take a

specific stand denying the allegations made by way of the Charge Memo. On going through the enquiry proceedings and also the written submission given by the Defence Representative it could be seen that the fact that Sathya Bama has approached him on 07.05.2002 to renew the deposit receipts is not seen denied by the petitioner during the enquiry proceedings. As could be seen from the statement made by the Defence Representative before the Enquiry Officer on 02.12.2003, the stand taken by the petitioner at the time is that when Sathya Bama approached him on 07.05.2002 she was informed that the deposit receipts could be closed only on 14.05.2002 on which date it is to mature. It is further stated by the Defence Representative that due to urgency Sathya Bama had requested to close one of the deposit receipts and the petitioner had helped him for premature closure of one of the receipts and had handed over the money. The Defence Representative proceeds that as Sathya Bama had some other private engagement in the town and did not want to carry the entire money and so she took Rs. 15,000/- which is part of the amount and asked the petitioner to retain the balance with him. I have referred to this statement of the Defence Representative to show that there was never a case for the petitioner that he has nothing to do with the transaction done on 07.05.2002.

14. Ext.M9 is the statement said to have been given by the petitioner to the Management. This statement is also produced in the enquiry proceedings. Nowhere in the enquiry proceedings I find a contention that this is a document obtained from the petitioner by coercion. However, in the Claim Statement it is contended by the petitioner that this document was obtained from him by a representative of the Management under coercion. For one thing, it is for the first time before this Tribunal such a contention is being raised. From the every contention raised in the Claim Statement it could be seen that Ext.M9 is a letter written by the petitioner in his own hand. His only contention is that it was obtained by coercion. The counsel for the Respondent has referred to the decision of the Apex Court reported in *ORISSA MINING CORPORATION AND ANOTHER VS. ANANDA CHANDRA PRUSTY* reported in AIR 1997 SC 2274 to argue for the position that in such circumstance it is for the petitioner to establish under what circumstances the document was obtained. In the above decision, the Supreme Court has held that there is no such thing as absolute burden of proof always lying upon the Management in a disciplinary enquiry. The burden of proof depends upon the nature of explanation and the nature of charges. In a given case the burden may be shifted on the delinquent Officer depending upon his explanation, it was held.

15. The above dictum laid down by the Apex Court is relevant when the statement made by the petitioner in

Ext.M9 is taken into account. In this the petitioner has stated that when Sathya Bama came for renewing the receipts for Rs. 50,000/- each, he had told her that the maturity date was not over and had asked her to come later. Since she wanted Rs. 15,000/- he had foreclosed one receipt and had credited it to her account and paid Rs. 15,000/- to her. He has then admitted that he has taken the balance amount to himself. This amounts to an admission on the part of the petitioner that the balance amount out of the amount credited to the account of Sathya Bama has been taken by himself. When such an admission is made, it is for the petitioner to explain under what circumstances he happened to retain the amount. So far as the management is concerned it is proved by the admission of the petitioner that he retained the amount. When it is admitted by the petitioner that the document was given by him in his hand it is for him to establish that it was obtained from him by coercion by the Management. The burden to prove this has shifted to him in view of the very case set up by him. The petitioner has not lifted a finger to prove that Ext.M9 is the document that has come out of coercion and it was not voluntarily given by him. When Ext.M9 is read along with other documents it is clear that he had fraudulently withdrawn the amount and utilized it by himself.

16. The next part of admission made by the petitioner in Ext.M9 makes the above fact more clear apart from proving the third charge also. It is clear from Ext.M9 that Sathya Bama had approached the petitioner on 14.05 2002, the date on which the deposits were to mature. According to the petitioner, by mistake he had written one deposit receipt, signed it himself and had given it to Sathya Bama. The case of the Respondent is that the deposit receipt was forged by the petitioner. This was because he had foreclosed one of the deposit receipts without her knowledge and had utilized the amount by himself. No other explanation can be given for the petitioner managing to fill up a deposit receipt form, signing it himself and giving it to Sathya Bama.

17. The fourth charge is regarding closure of the account and handing over of the Pass Book by the petitioner to Sathya Bama without updating, in order to conceal the fraudulent transaction committed by him. However, the petitioner has not stated anything about the closure of the account in Ext.M9. The Management has not adduced any evidence other than producing copy of the closed Pass Book in this respect. This by itself is not sufficient to prove this charge.

18. The irregularities committed by the petitioner on charge 1 to 3 themselves are very grave misconducts. An employee who is dealing with the public money is expected to be honest and straight in the transactions. The conduct of the petitioner was against this expectation. For the

proved misconducts itself, the punishment imposed on him is not inappropriate. The petitioner is not entitled to any relief.

In view of my discussion above, the reference is answered against the petitioner. An award is passed accordingly.

K. P. PRASANNA KUMARI, Prisiding Officer

Witnesses Examined:

For the 1st Party/Petitioner : WW1, Sri B. Ramalingam

For the 2nd Party/Management : None

Documents Marked.:

On the petitioner's side

Ex. No.	Date	Description
Ext.W1	13.07.2002	Show-Cause Notice issued to the petitioner
Ext W2	04.06.2003	Charge Memo issued to the petitioner
Ext W3	15.07.2003	Enquiry Notice issued to the petitioner
Ext W4	15.10.2003 to 02.12.2003	Enquiry proceedings
Ext W5	18.12.2003	Written brief submitted by the Presenting Officer before the Enquiry Officer
Ext W6	16.01.2004	Written brief submitted by the Defence Representative before the Enquiry Officer
Ext W7	22.01.2004	Enquiry Officer's report
Ext W8	10.03.2004	Written submissions given by the petitioner
Ext W9	27.04.2004	Punishment order issued to the petitioner
Ext W10	17.06.2004	Appeal submitted by the petitioner to the Respondent
Ext W11	15.07.2004	Letter submitted by the petitioner
Ext W12	15.07.2004	Personal hearing proceedings during appeal
Ext W13	15.07.2004	Written submission of the petitioner during the personal hearing of the appeal by the Respondent
Ext W14	07.08.2004	Final order issued by the Respondent rejecting petitioner's appeal

On the Management's side

Ex.No.	Date	Description
Ext.M1	-	Letter from Sathya Bama to Respondent to close SB Account
Ext. M2	14.05.2001	RD Receipt No. 727324 of Sathya Bama withdrawal slip for Rs. 54,300/-
Ext. M3	-	Withdrawal slip for Rs. 54,300/-
Ext. M4	14.05.2002	RD Receipt No. 815987 of Sathya Bama SB Pass Book
Ext. M5	-	SB Pass Book of Sathya Bama
Ext. M6	-	Ledger Account of Sathya Bama
Ext. M7	-	Letter from Sathya Bama to foreclose her two RDs
Ext. M8	10.07.2002	Complaint of Sathya Bama
Ext. M9	10.07.2002	Petitioner letter to Respondent
Ext. M10	06.02.2004	Respondent's letter to Petitioner enclosing the finding of the Enquiry Officer
Ext. M11	30.03.2004	Respondent's letter to Petitioner proposing punishment of dismissal
Ext. M12	15.04.2004	Personal hearing notice issued to Petitioner
Ext. M13	23.04.2004	Minutes of personal hearing

नई दिल्ली, 14 अक्टूबर, 2015

का.आ.1995.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 33/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं एल-41011/133/2014-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.1995.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 33/2014) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the Industrial Dispute between the management of North Eastern Railway and their workmen, received by the Central Government on 14/10/2015.

[No. L-41011/133/2014-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE**CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW****Present**

RAKESH KUMAR, Presiding Officer

I.D. No. 33/2014

Ref. No. L-41011/133/2014-IR(B-1) dated 06.05.2014

Between

Anchal Sangthan Secretary
Rail Sevak Sangh
C/o Shri D.P. Awasthi
49, Tilak Marg,
Lucknow.

(Espousing cause of Sri Chandra Dev)

And

1. Sr. Divisional Personnel Officer
North Eastern Railway
DRM Office, Ashok Marg
Lucknow.
2. The Chief Medical Superintendent
North Eastern Railway
Gonda (UP)

AWARD

1. By Order No. L-41011/133/2014-IR(B-I) dated 06.05.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Anchal Sangthan Secretary, Rail Sevak Sangh, C/o Shri D.P. Awasthi, 49, Tilak Nagar, Lucknow and Sr. Divisional Personnel Officer, North Eastern Railway, DRM Office, Ashok Marg, Lucknow and the Chief Medical Superintendent, North Eastern Railway, Gonda (UP) for adjudication.

2. The reference under adjudication is:

“क्या पूर्वोत्तर रेल प्रशासन, लखनऊ व गोंडा द्वारा श्री चंद्रदेव पुत्र श्री धनपाल, सफाईवाला को पुरानी पेंशन न देकर नई पेंशन दिया जाना न्यायोचित एवं वैध है? यदि नहीं तो कामगार किस राहत को पाने का हकदार है?”

3. On receipt of the reference order the workman's union was issued registered notice to file his statement of claim complete with relevant documents, list of reliance and witnesses before Tribunal on 17.07.2014 with an advance copy to the opposite party. The Secretary of the workman's union appeared before the Tribunal and requested for a date for filing of statement of claim.

4. On successive dates the management also turned up. Since the case was related to grant of old pension scheme instead of new pension scheme, the parties were advised to settle the dispute amicably through Lok Adalat. Accordingly, the case was taken up at Lok Adalat on 08.05.2015.

5. On 08.05.2015, Shri D.P. Awasthi, Secretary of the workman's union was present whereas the opposite parties were represented by Shri Upendra Kumar Sharma, Chief Welfare Officer.

6. The opposite party filed M-5, letter signed by Sri P.B. Prasad, Senior Divisional Personnel Officer, North Eastern Railway, Lucknow, enclosing circular No. 2012/F(E)III/I(I)/2 dated 29.10.2014 of the Railway Board. The management in letter M-5, referring circular dated 29.10.2014 has stated that the Railway Board, New Delhi vide their circular dated 29.10.2014 has directed to cover the employees who get temporary status prior to 01.01.2004 may be covered under Old Pension Scheme.

7. A copy of the M-4 was furnished to the workman's union. The authorized representative of the workman's union sought time to consult the workman; and accordingly, the case was taken up on 28.08.2015 at Lok Adalat. The Authorized representative of the workman's union. Shri D.P. Awasthi after going through the contents of letter, M-4 and circular dated 29.10.2014 showed willingness to withdraw the present industrial dispute being claim settled; and made and endorsement thereupon as under:

"Since the relief claimed by the Union has been accepted by the Railway Management, further proceeding of this case may kindly be dropped."

8. In view of the submission/endorsement of the workman's union for dropping of the proceedings, there is no grievance left with the workman's union as the present industrial dispute pertains to non-grant of old pension to the workman by the railway management and the management of the railway has granted the same vide circular 2012/F(E)III/I(I)/2 dated 29.10.2014 of the Railway Board. Resultantly, the industrial dispute stands settled; and no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly

9. Award as above.

LUCKNOW RAKESH KUMAR, Presiding Officer
24th September, 2015.

नई दिल्ली, 14 अक्टूबर, 2015

का०आ०1996—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 32/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं० एल-12012/280/1999-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.1996.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 32/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 14/10/2015.

[No. L-12012/280/1999-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

No. CGIT/LC/R/32/2011

General secretary,
Akhil Bhartiya Adhinasth Bank Karamchari Sangh,
24, Didvakar Enclave,
Patel Nagar City Centre,
Gwalior

...Workman/Union

Versus

General Manager,
State Bank of India,
Regional office,
Moti Market, Jayendra Ganj,
Gwalior

...Management

AWARD

Passed on this 26th day of August 2015

1. As per letter dated 28.4.2011 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L. 12012/280/1999-IR (B-I). The dispute under reference relates to:

“Whether the demand of the Akhil Bhartiya Adhinastha Bank Karamchari Sangh, Gwalior for permanent appointment of Shri Suresh Chander Rajak as General Attendant (Sweeper-cum-Farrash) in State Bank of India, is legal and justified? If so, what relief the workman/Union is entitled to?”

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted. Case of workman is that he was employed as temporary messenger on daily wages in branch of SBI for 90 days during 1984 to

1985. That bipartite agreement between management and All India SBI Staff Federation for absorption of daily wage messengers was settled. The temporary employees were categorised in 3 categories. All eligible candidates were given opportunity for consideration for permanent absorption. Workman appeared in interview for his absorption. His name was included in Waiting List. 2nd party however failed to follow said list in order of merit pick and choose method was adopted while issuing appointment. One Raj Kumar Verma was given appointment in 1992 in Nowgaon Branch. Mathura Prasad Verma was given appointment in Pichchi Kargama, Asha Ram Sahu in Lidhaura branch. Many others were also give appointment in out of turn Workman was denied benefit.

3. That 2nd party issued certificate dated 21-5-97. Employees working on consolidated salary between 1-7-75 to 14-8-91 were allowed to appear in the interview, that employees who have already appeared in interview in 1990 or 1992 were not required to appear in the interview again. As workman already appeared in interview, therefore he had not appeared for interview in 1997. The interview were held on 26th, 17th March, 1996. The persons junior to him was given appointment to the post of messenger. Name of workman was at Sl. No. 4 of the earlier Waiting List. Despite of representation submitted by workman, he was not given appointment as messenger. His representations were not responded. Workman raised dispute under reference. Workman raised dispute under reference. Workman prays management be directed to give him appointment as messenger.

4. 2nd party filed Written statement opposing claim of the workman. Preliminary objection is raised by management that engagement of workman was purely temporary subject to availability of work. Workman worked at Digoda branch during 5-11-84 to 31-12-84, 1-1-85 to 2-2-85 for total 77 days in broken period. The settlement dated 17-11-87 between management and staff federation related to temporary employees fulfilling eligibility criteria were given chance of consideration for appointment against vacancies likely to arise during 1987 to 99. The categories of employees were given those who completed 240 days continuous service continuously in block of 12 months or less after 1-7-75., those who completed 270 days aggregate temporary service in any continuous lock of 36 calendar months after 1-7-75. Those who completed 30 days aggregate temporary service in any calendar year after 1-7-75 or a minimum of 70 days in any continuous block of 36 calendar months. Part time employees were to be given preference for filling up of full time vacancies. It was understood that vacancies first be filled up from unused panels of the temporary employees already interviewed and wait. Remaining vacancies will be thrown open for the category of temporary employees. That interview will be conducted by Selection Committee to determine suitability/unsuitability of temporary employee for permanent appointment in the Bank. The guidelines regarding

reservation of vacancies for SC/ST Ex-serviceman would however be applicable. The period of said agreement was extended from 1987 to 1991. Other agreement was raised between management and staff federation on 27-10-88 providing chance to be given to the temporary employees in Cat-A, B, C. Settlement was arrived at between management and staff federation on 9-1-91. The vacancies till December 1994 were to be considered for existing vacancies. Remaining Waiting List shall stand lapsed. That panel of daily wagers will be used for filling vacancies during 1995 to December 1996. If the panel of temporary employees or the panel of daily wages and casual labour would be decided administratively on circle basis depending upon local requirement in consultation with the Federations affiliated by the circle management. All casual labours interviewed and found suitable for promotional appointment will be empanelled category-wise.

5. 2nd party submits that the allegation of workman that junior employees to him were given appointment is incorrect. The details of working days of workmen are given in para 12 of the Written Statement. The claim of workman that he has been waitlisted and should be absorbed permanently is incorrect.

6. 2nd party submits that workman had worked for total 77 days from 5-11-84 to 31-12-84, 1-1-85 to 9-2-85. He had not worked for 90 days is pleaded. Workman was considered for absorption as per settlement dated 7-11-87. He worked only for 77 days in broken period. The select list was prepared. The meritorious employees were appointed. The candidate were paid maximum aggregate service during 1-7-75 to 31-7-88 were placed at top and next to him in terms of length of services were placed. Name of workman was included in combined waiting list at Sl. No. 92. Candidates upto Sl. No. 55 were given appointment. Waiting List was kept alive till 31-3-97. Remaining candidate could not be appointed.

7. Ist party submitted rejoinder reiterating his contentions in statement of claim. Ist party contented that workman had worked for 224 days. Denial of appointment to workman is challenged.

8. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

(i) “Whether the demand of the Akhil Bhartiya Adhinastha Bank Karamchari Sangh, Gwalior for permanant appointment of Shri Suresh Chander Rajak as General Attendant (Sweeper-cum-Farrash) in State Bank of India, is legal and justified?	In Affirmative
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(ii.) It not, what relief the workman is entitled to?"

As per final order.

REASONS

9. The terms of reference relates to demand of Kamgar Sangh for permanent appointment to Suresh Chander Rajak *i.e.* the Ist party workman. The settlement between federation are not in dispute.

10. Management has produced copy of settlement dated 17-11-87 at Exhibit M-1 the temporary employees are categorized as A, B, C. The temporary employee completing 240 days temporary service in 12 months or less after 1-7-75 temporary employees completed 270 days aggregate temporary service in block of 36 months after 1-7-75.

Temporary employees completing minimum 30 days aggregate service in any calendar year after 1-7-75 or the minimum of 70 days in aggregate temporary service in any continues block of 36 months are eligible for permanent part time employees. Exhibit M-2 settlement dated 16-7-88 Exhibit M-3 is settlement dated 27-10-88 finds similar clauses. Exhibit M-4 settlement dated 9-1-91 the period is extended till 1995-96. Exhibit M-5 is settlement dated 13-7-96. The period was extended till March 1997. Exhibit M-6 is settlement between Union and circle office Bhopal dated 20-2-97. The categories for eligible temporary employees were not modified.

11. Workman filed affidavit of his evidence supporting his contentions in statement of claim. That during 1984-85 he worked as temporary messenger on daily wages for more than 90 days. He was working in 2nd party Bank. His affidavit is also devoted to the circular dated 21-5-97. That the junior employees to him were appointed in Navgaon branch. Shri Raj Kumar Verma, Mathura Prasad Verma & Asha Ram Sahu were appointed in Digoda branch, his name was included in Waiting List after interview. He was not called for interview in 1997. The candidates interviewed on 26th, 27th March 97 junior to him were given appointment. From his evidence, documents Exhibit W-1 to W-8 are admitted in evidence. I deal with those documents at later part. Workman in his cross-examination says he was appointed in October 1984 by Branch Manager, his name was called from Employment Exchange that he has not produced documents about his registration in Employment Exchange Office. He was engaged as messenger. His pay was deposited in Bank Account. He reiterates that he worked for 90 days but he was unable to tell exact date. Shri Raj Kumar Verma when appointed in the bank, he could not tell the date. Asha Ram was appointed first in 1997. He was unable to tell when Mathura Prasad was first appointed in Bank or date of his termination. He further says he and Raj Kumar belong to SC. Asha and Mathura were from open categories. He has no information about the rules for regularization in service. He has information about procedure for appointment of

messengers. He denies for regularization, public notice is given by the Bank. The signatures for regularization of service, information is called from Employment Exchange. Recruitment of messengers was made in 1997.

12. Management's witness Uday Bhagwat filed affidavit stating that during 5-11-84 to 31-12-84, 1-1-85 to 9-2-85, workman had worked for 77 days in broken period. He also refers to settlement dated 17-11-87 for absorption of temporary employees, eligibility criteria are reproduced in its affidavit of evidence. His affidavit is also devoted to other circulars, settlement. Management's witness denies that candidates junior to him were given appointment to Raj Kumar Verma, Mathura Prasad Verma & Asha Ram Sahu. The details of their working days and other particulars are stated in Written Statement stated in para 13 of his affidavit. In his cross-examination, management's witness says no document is produced on record that workman had worked only for 77 days. He denied suggestion that workman worked for 224 days during the relevant period. The Waiting List is not produced. Despite the management's witness had undertaken to produce it. The witness of managements denies suggestion that workman had worked less number of days than Shri Raj Kumar Verma, Mathura Prasad Verma & Asha Ram Sahu. Though management's witness shows willingness to produce Waiting list, it is not produced on record. After 31-3-97, no public notice was issued for filling vacancies. He claims ignorance whether workman was told that his name was in waiting list therefore it was not necessary to call him for interview again.

13. Workman produced documents Exhibit W-1 to W-8. In W-1, name of workman Suresh Chander Rajak is S1.No.4. his working is shown in Digoda branch. Documents Exhibit W-2 is letter issued to workman by Asstt. General Manager in the matter of appointment. In Exhibit W-3, the working days of workman are shown 77 during the relevant period. In W-4, workman was directed to approach the nearest branch in matter of appointment of sub staff. Exhibit W-5 is letter dated 21-3-95 issued by Asstt. General Manager to approach nearest bank in the matter of appointment letter. In Exhibit W-6, Regional Manager informed workman that after his interview on 24-12-90, his name was included in Waiting List. Exhibit W-7 is copy of Bipartite Agreement dated 27-10-88, 9-1-91. Exhibit W-8 is letter issued by Chief General Manager after dispute was raised before ALC. In annexure along with said letter, name of Suresh Rajak is shown working in Digoda branch, his working days are shown 13 days at Digoda branch and 111 days in Jhawar branch total working days 224.

14. Despite management's witness had shown his willingness to produce select list of 1997, those documents are not produced Learned counsel for workman Shri Arbind Srivastava submits that management has deliberately not produced Waiting List, adverse inference be drawn. If those documents would have been produced, it would have supported claim of workman.

15. Shri Vijay Tripathi arguing for 2nd party submits that workman had worked only for 77 days during relevant period. No candidates working for less days than 1st party workman were given appointment. That working days and number in Waiting list is pleaded in Written Statement and management's witness has also stated in his evidence therefore adverse inference should not be drawn.

16. Learned counsel further submits that burden of proof lies on workman about completing 240 days continuous service relying in ratio held in

Case of Krishna Bhagya Jala Limited *versus* Mohammed Rafi reported in 2009(11) SCC-522. Their Lordship dealing with violation of Section 25-F of ID Act held burden of proof as to completion of 240 days continuous service in the year lies on the aggrieved workman.

Present case is not related to violation of Section 25-F of ID Act. Even after name of workman was enlisted in Waiting list, after his interview, he was not given appointment. Junior persons were given appointment. Management is not producing Waiting list of 1992 or 1997. Despite the witness of management had shown willingness to produce those documents, the ratio in above cited case cannot be applied to case at hand.

17. Reliance is also placed in Case of Secretary, Irrigation and Power Department, Govt. of Orissa *versus* Niranjana Swain reported in 1998(8) SCC 651. Their Lordship dealing with the matter under Section 37 non production of documents in Para-2. On the question of non production of documents, it can only be said that the documents were in the power, possession and custody of the appellants and they should have produced the said documents and even if the documents were not produced despite the respondent being called upon to do so and having given an undertaking in that behalf, we fail to see how it can be contended that the Arbitrator was not entitled to proceed because at best, the Arbitrator can raise an adverse inference if necessary. That the arbitrator was not entitled to proceed because arbitrator can raise the adverse inference.

In present case, despite management's witness shown willingness to produce the Waiting List, those documents are not produced. Therefore adverse inference against 2nd party is justified. If the documents of Waiting List of 1992, 97 are produced, those documents would support claim of workman. In Annexure with W-8, 2224 working days of workman are shown whereas in documents Exhibit W-3, during relevant period his working days are shown 77 days. Management claims that the persons have less working days than workman are not given appointment. Waiting list is not reproduced therefore the evidence of management's witness cannot be accepted. The evidence of workman is supported by document Exhibit W-3, W-8 deserves to be accepted. After his interview, he was not

given appointment as per settlement is illegal. The demand of Union for giving appointment of workman is justified. For above reasons, I record my finding in Point No. 1 in Affirmative.

18. The evidence of workman is silent about his employment therefore any direction w.r.t. payment of wages would not be appropriate.

19. In the result, award is passed as under:-

- (1) The demand of the Akhil Bhartiya Adhinastha Bank Karamchari Sangh, Gwalior for permanent appointment of Shri Suresh Chander Rajak as General Attendant (Sweeper-cum-Farrash) in State Bank of India is proper and legal.
- (2) 2nd party is directed to appoint workman as messengar as per settlement dated 17-1-87. He is not allowed any backwages.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2015

का०आ० 1997. — औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सतपुड़ा क्षेत्रीय ग्रामीण बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण जबलपुर के पंचाट (संदर्भ संख्या 69/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं० एल-12012/39/2007-आईआर (बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O. 1997. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 69/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court Jabalpur as shown in the Annexure, in the industrial dispute between the management of Satpura Kshetriya Gramin Bank and their workmen, received by the Central Government on 14/10/2015.

[No.L-12012/39/2007-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/69/2007

Shri Sriram Lanjewar,
S/o Shri Kamal Prasad Lanjewar,
Vill. & PO Mate, Kirnapur

Distt. Balaghat (MP), Chhindwara
Balaghat

Workman

Versus

The Chairman,
Satpura Kshetriya Gramin Bank,
Distt. Chhindwara

Management

AWARD

Passed on this 31st day of August 2015

1. As per letter dated 24-7-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D.Act, 1947 as per Notification No.L-12012/39/2007-1R(B-I). The dispute under reference relates to:

"Whether the action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Sriram Lanjewar. S/o Shri Kamal Prasad Lanjewar is justified? If not, to what relief he is entitled to?"

2. After receiving reference, notices were issued to the parties. 1st party workman submitted statement of claim at Page 2/1 to 2/4. Case of 1st party workman is that he was engaged as peon-cum-messenger /by Branch Manager Kirnapur branch on 2-4-90. Thereafter Kirnapur branch was transferred and amalgamated in Hatta Branch. He rendered his services in said branch from 14-11-94 to 27-11-03. That he was engaged on vacant sanctioned post after following due process by 2nd party No.2. He rendered his services diligently for more than a decade. That he was eligible for regularization of post of messenger-cum-peon considering his long continuous service. Workman had submitted representations to the Bank for regularization but were of no avail. Workman had filed Writ Petition 1095/02 before Hon'ble High Court, MP Jabalpur. The Writ Petition was disposed off on 20-3-02 allowing opportunity to raise his grievance before appropriate forum. Workman raised dispute through Union before conciliation authority under ID Act. During pendency of conciliation proceeding before ALC, Chhindwara, his services were dispensed with from 27-11-03 by the Bank without issuing order in writing. He was not served with notice or compensation in lieu of notice was not paid to him.

3. 1st party workman reiterates that he completed more than 240 days continuous service. He is covered as employee under Section 25 B of ID Act. The respondent Bank failed to follow guidelines and scheme for regularization of daily wage employees completing 240 days service in a calendar year *i.e.* circular issued by NABARD dated 7-5-87 and circular by RBI dated 8-10-84. The case of 1st party workman as well as co-employee was put up by Union before Bank for implementation of above circular for regularization. Despite of agreement was raised upon between Union and Bank for unknown reasons. 2nd party

Bank denied to implement the same. Letter dated 20-3-94 is relied. It is alleged that Bank despite need of regular staff on post of messenger-cum-peon adopted unfair labour practice de hors the principles of natural justice. In violation of Section 33(C) of ID Act, services of workman were terminated without notice. 2nd party continued practice of pick and choose the daily rated employees at their whims and fancies. 2nd party Bank violated section 25-F, G, H of ID Act as juniors to the workmen were retained in service even after discontinuation of service of 1st party workman. It is alleged that after discontinuing workman, other fresh persons were appointed in place of daily wagers. Policy of last come first go was not followed. Workman should have been given preference over others in case of new recruitment. The sponsored Bank of 2nd party Central Bank of India issued directions to all branches on 16-2-90 directing them to provide information of all daily wage employees who have completed 240 days continuous service in 12 months during the period 1-1-82 to 31-3-95 by Regional Office, Chhindwara. The direction was not complied. It is reiterated that during pendency of conciliation proceedings pertaining to regularization of services, workman was discontinued by the Bank in arbitrary manner. The board of directors taken decision to discharge services of employees during pendency of conciliation proceedings *vide* communication dated 20-11-03. Workman further submits that since his initial employment from 2-4-90 till 27-11-03, PF amount was deducted from his wages. The deduction of PF wages of workman clearly indicates that he worked more than 240 days in a calendar year. His services are terminated illegally. On such ground, workman prays for his reinstatement with full backwages.

4. 2nd party filed Written Statement at Page 3/1 to 3/4 opposing claim of workman. 2nd party raised preliminary objection that workman has committed theft of documents. All the documents relied by workman are denied. That 1st party is not workman. He was never appointed by the management. He was not sponsored through Employment Exchange. He did not undergo process of selection. The board has not sanctioned any such post. 2nd party has no policy to appoint any person contrary to the norms and rules. their relationship of master servant between parties is denied. It is denied that workman was engaged by Branch Manager, Kirnapur, Distt. Balaghat as peon-cum-messenger. It is denied that workman was transferred to Hatta branch and has rendered continuous service from 14-1-94 to 27-11-03. It is denied that workman was engaged on vacant sanctioned post following due process. It is reiterated that workman has not completed 240 days continuous service during any of the calendar year. He is not covered as employee under Section 25 B of ID Act. 2nd party denies that despite need of regular staff, the post of messenger-cum-peon, the Bank adopted unfair labour practice. It is denied that services of workman are dispensed with in

violation of provisions of ID Act. It is submitted that provisions of ID Act are not applicable to present case. "Termination of services of workman in violation of Section 25-F,G,H of ID Act is denied. That temporary need in the Bank depends on casual work which is fulfilled by any person who offers his service for required period. The principles of policy of last come first go is not attracted in the matter.

5. 2nd party denied that any circulars for regularization temporary employee has been issued. Appointment of workman denied. That deduction of PF is in compliance of provisions under PF Act. The prayer of workman is opposed. It is submitted that workman is not entitled to any relief.

6. 1st party workman filed rejoinder at Page 4/1 to 4/2 reiterating his contentions in statement of claim.

7. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|---------------------|
| (i) Whether the action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Sriram Lanjewar, S/o Shri Kama!Prasad Lanjewar is justified? | In Negative |
| (ii) If not, what relief the workman is entitled to?" | As per final order. |

REASONS

8. Workman is challenging discontinuation of his service in violation of Section 25-F of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman says that he was engaged as sweeper-cum-messenger from 2-4-90 in branch mate, Tehsil Kirnapur by Branch Manager on vacant post. He worked with mate branch from April 90 to October 94. He worked more than 240 days in each calendar year from 14-11-90 to 26-11-03, he was working in Hatta branch. He continuously worked more than 240 days during each of the year. His services were terminated without notice, he was not paid retrenchment compensation. He raised dispute for regularization of his service. During pendency of conciliation proceedings, his services were discontinued. After termination of his services, other daily wage employees were engaged by the Bank he was not given re-employment. He was paid wages at Collector rate Rs. 82.77 per day. 12% amount of wages was deducted towards PF during the year 1999 to 2003. In his cross-examination, workman says appointment letter was not given to him. The post was not advertised. He has not produced certificate that he was working more than 240

days during the year 1990 to October 94 and 14-11-94 to 26—03 working in Hatta branch. Workman admits that daily work could be obtained from any employee. That he has not produced documents about engaging daily wage employee after he was discontinued. That he produced receipt about deduction of 12% wages towards PF. That Attendance Register of daily wage employee is not maintained. He denies that in attendance register, his name was maintained. The documents Exhibit W-3(a) to (c) are admitted from his evidence in cross-examination. He has no other documents.

9. Management's witness Snehlata Jaiswal filed affidavit of her evidence denying workman was appointed on vacant post as messenger on 2-4-90 in Mate branch. That workman had not worked in said branch during April 90 to October 94. Workman never worked for 240 days during any of the year. Workman never worked in Hatta branch of the Bank during 14-9-94 to 26-9-03. 1st party workman is not employee of the Bank. There was no question of issuing notice or payment of compensation to him. She has further stated that whenever any casual work occurs any person including applicant is available comes, Bank offers to do casual work. On completion of such casual work, his services automatically comes to end. In her cross-examination, management's witness says she did not work in either of the branches at any time. She was working in control office during 1983 to 94. The witness of the management was unable to tell since when she is made officer of the case. The Head office of the bank was shifted to Chhindwara. Personally she doesnot know workman. She denies that Shriram was engaged for cleaning work in the bank from 2-4-90 to 27-4-03. It is not hearsay that workman was never employed in the Bank but she was unable to tell for how many days workman was engaged for cleaning work. She was unable to tell rate of wages paid to workman before filing her affidavit, she discussed about the case with Branch Manager but she did not tell name of Branch Manager with whom she had talked. Post of peon was not sanctioned in the branch. She did not agree that the work of pen is job of permanent nature. The cleaning work was carried in the branch but she claims ignorance who was doing the cleaning work. On information given by Branch Manager, she stated in her affidavit that workman not completed 240 days. Said information was given orally. Workman was not discontinued as he was never engaged. Presently she does not know who was engaged for cleaning work. She was unable to tell whether workman was paid wages under vouchers. She was unable to tell whether PF was deducted from his salary and deposited in the account. Branch Manager did not ask permission to engage daily wage employee. Branch Manager has discriminatory power for payment of daily wage employees. Her affidavit is based on information received from Branch Manager. The Bank maintained payment register, attendance roll, payment vouchers PF

account statement, cash scroll. She was unable to tell whether said record was maintained from 1989. She had not seen above record before filing her affidavit. She denied that workman was regularly working from 90 to 2003. She denies that services of workman were terminated as he claim regularization in the year 2003. That he filed affidavit in this case as per information forwarded by Branch Manager. The Branch Managers are in service. Workman was not employee of the Bank. He was not paid retrenchment compensation. No chargesheet was issued to him for any misconduct. She claims ignorance whether some employees are reinstated in service as per order passed by Hon'ble High Court. From cross-examination of management's witness, it is clear that she was not working in the branch. She gave evidence as per information received by Branch Manager. As such her evidence is hearsay. She has no personal knowledge.

10. Workman has produced documents. Exhibit W-1 settlement between Union and management of the Bank dated 20-3-94. Exhibit W-1 refers to circular issued by NABARD dated 7-5-87 and circular issued by RTI dated 8-8-84 for regularization of part time farrash. Process of regularization of such part time farrash working for 240 days was started. Said process would be continued till 15-6-94. Seniority list would be published in 15-4-95. The employees who did not receive bonus orders for payment of bonus to them. Exhibit W-2 is letter issued by Chairman of the Bank to General Manager finds clear reference that 54 persons have been working on daily wages as messengers in branch offices of the Bank against regular vacancies since long. Said matter also refers to meeting of Board of Directors dated 22-9-03. The letter is clear that it will not be possible to run Bank without substaff or without casual labours. The matter has to be resolved by providing permanent sub staff. Guidelines was requested from General Manager in the matter. Document Exhibit W-1(a) shows workman was working with the Bank from 30-11-02 to 25-1-03 for 24 days. Exhibit W-3(b) workman worked for 29 days from 26-1-02 to 26-2-02. Exhibit W-3(c) shows 28 working days from 20-4-03 to 31-5-03. The deduction of amount of Rs. 226/-, 273/-, 263/- is shown on those document. Letter Exhibit W-4 issued by Regional Office. Workman has directed to approach Branch Manager, Hatta. Other documents produced by workman are not proved by valid evidence.

11. The question arise about evidence of workman and management's witness. As discussed above, the management's witness has no personal knowledge. Her evidence is based on information received from Branch Manager who are still working in the branch. The documents maintained in the Bank payment register, AC statement, etc. which are maintained by the Bank are not produced. On the other hand, evidence of workman is corroborated from documents Exhibit W-3(a) to (c).

12. The evidence of workman is cross-examination shows that workman has not produced documents about

his working for 240 days during 1990 to October 1994 and 14-1-94 to 26-11-03. After discontinuation of his service, other persons engaged on daily wages. The documents relating to it are not produced. The deduction of PF of workman is shown as Exhibit W-3(a) to (c) is indicative that the workman was working with 2nd party was covered under provisions of PF Act. the management's witness in her cross-examination says she does not mean that workman was never working in the Bank. In cross-examination, there is no suggestion that workman was not working with Bank or he had not completed 240 days continuous service as stated in his affidavit. Evidence of workman on above point remained unchallenged in his cross-examination. Evidence of workman is supported by some documents Exhibit W-3(a) to (c) and his evidence remained unchallenged on the point he had worked more than 240 days during any of the year. The evidence of management's witness is silent as to who was working as regular sweeper in the Bank. If no regular sweeper was working in the Bank, the Chairman of Bank had written letter to the General Manager Exhibit W-2 clearly stating that 54 persons have been working on daily wages or messengers in branches against regular vacancies since long corroborates evidence of the workman. I find no reason to disbelieve workman that he was continuously working in the bank from 1990 to 2003. Evidence of workman is about completing more than 240 days continuous service finds corroboration from document Exhibit W-2. As per settlement Exhibit W-1, the process for regularization of part time employee, part time farrash was started and it was not to be completed till 5-4-94 as per the circulars issued by NABARD dated 7-5-87, circular issued by RBI 8-10-84. 2nd party has not produced those circulars. The evidence of management's witness is clear that workman was not served with notice. Retrenchment compensation was not paid to him, services of workman are terminated without violation of Section 25-F of ID Act.

13. Learned counsel for Ist party Shri A.K. Shashi relies on ratio held in case of

Maharashtra State Board of Secondary and Higher Secondary Education, Amravati and another *versus* Sanjay Krishnarao Shrugare Amravati reported in 2008-II-CLR-301. Their Lordship dealing with Section 25-F, G, H of ID Act in case related to unfair labour practice under Maharashtra Act held that best possible evidence on the point of total service put I by the respondents not brought on record by the appellant. Appellant has to blame itself for this failure on its part. The Labour Judge and the Industrial Court did not err in drawing their conclusions.

In present case though management's witness admits the record of various files in maintained in the Bank. It is not produced. It appear that management is suppressing the material evidence. From above reasons, it is clear that services of Ist party workman are terminated in violation

of Section 25-F of ID Act. Therefore I record my finding in Point No. 1 in Negative.

14. Point No. 2—In view of my finding in Point No. 1 termination of 1st party is in violation of Section 25-F of ID Act, question remains for consideration whether workman is entitled for reinstatement with backwages. Though workman in his pleadings and evidence has referred to the circulars issued by NABARD and RBI relating to regulation of part time employees, those circulars are not produced on record, the term of reference pertain to regularization of workman rather it pertains to legality of termination of his service. From reasons dealing with Point No. 1, it is clear that 1st party workman was working continuously with 2nd party as peon/sweeper from 1990 to 2003 for about 12-13 years but post was not advertised. Workman was not issued appointment letter. Workman was engaged on daily wages. As per Exhibit W-2, 54 part time employees were working against sanctioned post for long period. The advice of General Manager was requested by the Chairman. Point w.r.t. the relief for reinstatement with backwages, Shri A.K. Shashi counsel for workman pointed out my attention to the award passed in R/88/2001 & R/9/2 to 17/12 & 1/13. Considering ratio held in various cases, in Para 28 of the award, it was observed that workman have worked for different period. The reinstatement with backwages is not automatic. The facts of each case needs to be considered. Workman who worked more than 2 years and workman working between 4-7 years needs different consideration. Workman who have completed 10 years service for long time deserves reinstatement. Workman working more than 7 years deserves compensation Rs. 50,000/-, workman working about 4 years deserves compensation Rs. One Lakh. Same principle would be applied while dealing with the claim for reinstatement by workman. Workman was working with the 2nd party from 1990 to 2003 for about 13 years justified his claim for reinstatement.

15. Learned counsel for 2nd party Shri Pramesh Jain submitted written notes of argument opposing claim of workman for reinstatement that workman had not completed 240 days continuous service. Learned counsel relies on ratio held in

Case of BSNL *versus* Bhurumal reported in Civil Appeal No. 10957/2013. In Para 24 of the judgment, their Lordship considering ratio held in case of State of Karnataka *versus* Uma Devi 2006(4) SCC-1 observed thus when he cannot claim regularization and he has no right to continue even as a daily wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself in as much as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay.

In Exhibit W-1, Union and management had arrived at settlement of regularization of part time employees on

15-6-94. In Exhibit W-2 Chairman of the Bank has requested advice of General Manager that 54 part time employees were working in the Bank since long against sanctioned post. The ratio in above cited case cannot be applied to case at hand as the facts are not comparable.

Learned counsel for 2nd party Shri Pramesh Jain also relies on ratio held in case of Tapash Kumar *versus* BSNL reported in 2014 AIR SCW 5816. Their Lordship have considered when reinstatement can be ordered. The order of Division Bench awarding compensation in lieu of reinstatement was set aside. In para-5 of the judgement, their Lordship held it is no doubt true that Court may pass an order substituting reinstatement by awarding compensation but the same has to be based on justifiable grounds *i.e.* (1) where the industry is closed, (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit, (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and (iv) when he has lost confidence of the management to discharge duties.

In present case, management's witness says any chargesheet for misconduct was not issued to the workman the Bank is not closed. Workman have not attained age of superannuation. The ratio held in above cited case does not support the contentions of 2nd party.

Learned counsel for 2nd party also relies on ratio held in case of Mahboob Deepak *versus* Nagar Panchayat Gajraula reported in Appeal NHO. 5875 of 2007. In para 2 of the judgement, their Lordship discussed it is now well settled by a catena of decisions of this court that in a situation of this nature instead and in place of directing reinstatement with full back wages, the workmen should be granted adequate monetary compensation.

Ratio held in above case 2014 AIR SCW 5816 holds the filed that reinstatement can be refused only on 4 grounds discussed above. Therefore ratio in above cited case cannot be beneficially applied. For same reasons, ratio held in case of MP Administration *vs* Tribhuban reported in 2007(5) Scale 397 cannot be beneficially applied to case at hand.

16. At the time of argument, learned counsel for workman Shri A.K. Shashi submits that workman is not interested in backwages rather workman be provided reinstatement without backwages. For the reasons discussed above, it would be appropriate to direct reinstatement of workman considering he was working with 2nd party for about 3 years on daily wages. Despite settlement Exhibit W-1 & W-2 clearly stating that 54 part time employees were working against sanctioned post for long period, it is not known what advice was given by General Manager to said workman, reinstatement of workman would be appropriate. Accordingly I record my finding in Point No. 2.

17. In the result, award is passed as under:—

- (1) The action of the management of Satpura Kshetriya Gramin Bank, Chhindwara in terminating the services of Shri Sriram Lanjewar, S/o Shri Kamal Prasad Lanjewar is not proper and legal.
- (2) Termination of workman is set-aside. 2nd party is directed to reinstatement workman without backwages.
- (3) Parties to bear their respective costs.

R.B. PATLE, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2015

कांआ 1998.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ सं० 36/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2015 को प्राप्त हुआ था।

[सं० एल-41011/36/2014-आईआर(बी.-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O. 1998.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 36/2014) of the Central Government Industrial Tribunal-Cum-Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of the North Eastern Railway and their workmen, received by the Central Government on 14.10.2015.

[No. L-41011/36/2014-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

Present

RAKESH KUMAR,
Presiding Officer

I.D. No. 36/2014

Ref. No. L-41011/36/2014-IR(B-1) dated: 23.04.2014

Between

Anchal Sangthan Secretary
Rail Sevak Sangh
C/o Shri D.P. Awasthi
49, Tilak Nagar
Lucknow.

(Espousing cause of Sri Mohan Lal)

AND

1. Sr. Divisional Personnel Officer
North Eastern Railway
DRM Office, Ashok Marg,
Lucknow.

2. The Chief Medical Superintendent
North Eastern Railway
Gonda (UP)

AWARD

1. By order No. L-41011/36/2014-IR(B-I) dated 23.04.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Anchal Sangthan Secretary, Rail Sevak Sangh, C/o Shri D.P. Awasthi, 49, Tilak Nagar, Lucknow and Sr. Divisional Personnel Officer, North Eastern Railway, DRM Office, Ashok Marg, Lucknow and the Chief Medical Superintendent, North Eastern Railway, Gonda (UP) for adjudication.

2. The reference under adjudication is:

“क्या पूर्वोत्तर रेल प्रशासन, लखनऊ व गोंडा द्वारा श्री मोहन लाल पुत्र श्री पन्ना लाल और श्री श्याम नाथ, पीडब्लूआई, नानपारा को पुरानी पेंशन न देकर नई पेंशन दिया जाना न्यायोचित एवं वैध है? यदि नहीं, तो कामगार किस राहत को पाने का हकदार है?”

3. On receipt of the reference order the workman's union was issued registered notice to file his statement of claim complete with relevant documents, list of reliance and witnesses before Tribunal on 17.07.2014 with an advance copy to the opposite party. The Secretary of the workman's union appeared before this Tribunal and requested for a date for filing of statement of claim.

4. On successive dates the management also turned up. Since the case was related to grant of old pension scheme instead of new pension scheme, the parties were advised to settle the dispute amicably through Lok Adalat. Accordingly, the case was taken up at Lok Adalat on 08.05.2015.

5. On 08.05.2015, Shri D.P. Awasthi, Secretary of the workman's union was present whereas the opposite parties were represented by Shri Upendera Kumar Sharma, Chief Welfare Officer.

6. The opposite party filed M-5, letter signed by Sri P.B. Prasad, Senior Divisional Personnel Officer, North Eastern Railway, Lucknow, enclosing circular No. 2012/F(E)III(I)/2 dated 29.10.2014 of the Railway Board. The Management in letter M-5, referring circular dated 29.10.2014 has stated that the Railway Board, New Delhi vide their

circular dated 29.10.2014 has directed to cover the employees who got temporary status prior to 01.01.2004 may be covered under Old Pension Scheme.

7. A copy of the M-5 was furnished to the workman's union. The authorized representative of the workman's union sought time to consult the workman, and accordingly, the case was taken up on 28.08.2015 at Lok Adalat. The Authorized representative of the workman's union, Shri D.P. Awasthi after going through the contents of letter, M-5 and circular dated 29.10.2014 showed willingness to withdraw the present industrial dispute being claim settled; and made an endorsement thereupon as under:

"Since the relief claimed by the Union has been accepted by the Rly. Management, the further proceeding of the case may be dropped."

8. IN view of the submission/endorsement of the workman's union for dropping of the proceedings, there is no grievance left with the workman's union as the present industrial dispute pertains to non-grant of old pension to the workman by the railway management and the management of the railway has granted the same vide circular 2012/F(E)III/I(1)/2 dated 29.10.2014 of the Railway Board. Resultantly, the industrial dispute stands settled; and no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

9. Award as above.

Lucknow RAKESH KUMAR, Presiding Officer
24th September, 2015.

नई दिल्ली, 14 अक्टूबर, 2015

का.आ.१९९९.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार उत्तर पूर्व रेलवे के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ सं० 35/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 14.10.2015 को प्राप्त हुआ था।

[सं० एल-41011/35/2014-आईआर(बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.1999.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 35/2014) of the Central Government Industrial Tribunal-Cum- Labour Court, Lucknow as shown in the Annexure in the Industrial Dispute between the management of the North Eastern Railway and their workmen, received by the Central Government on 14.10.2015.

[No. L-41011/35/2014-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

Present

RAKESH KUMAR,
Presiding Officer

I.D. No. 35/2014

Ref. No. L-41011/35/2014-IR(B-1) dated: 23.04.2014

Between

Anchal Sangthan Secretary
Rail Sevak Sangh
C/o Shri D.P. Awasthi
49, Tilak Nagar
Lucknow.

(Espousing cause of Sri Mohan Lal)

AND

1. Sr. Divisional Personnel Officer
North Eastern Railway
DRM Office, Ashok Marg,
Lucknow.
2. The Chief Medical Superintendent
North Eastern Railway
Gonda (UP)

AWARD

1. By order No. L-41011/35/2014-IR(B-I) dated 23.04.2014 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Anchal Sangthan Secretary, Rail Sevak Sangh, C/o Shri D.P. Awasthi, 49, Tilak Nagar, Lucknow and Sr. Divisional Personnel Officer, North Eastern Railway, DRM Office, Ashok Marg, Lucknow and the Chief Medical Superintendent, North Eastern Railway, Gonda (UP) for adjudication.

2. The reference under adjudication is:

“क्या पूर्वोत्तर रेल प्रशासन, लखनऊ व गोंडा द्वारा श्री हीरालाल पुत्र श्री सत्यनारायण, सफाईवाला को पुरानी पेंशन न देकर नई पेंशन दिया जाना न्यायोचित एवं वैध है? यदि नहीं, तो कामगार किस राहत को पाने का हकदार है?”

3. On receipt of the reference order the workman's union was issued registered notice to file his statement of claim complete with relevant documents, list of reliance and witnesses before Tribunal on 17.07.2014 with an advance copy to the opposite party. The Secretary of the workman's union appeared before this Tribunal and requested for a date for filing of statement of claim.

4. On successive dates the management also turned up. Since the case was related to grant of old pension

scheme instead of new pension scheme, the parties were advised to settle the dispute amicably through Lok Adalat. Accordingly, the case was taken up at Lok Adalat on 08.05.2015.

5. On 08.05.2015, Shri D.P. Awasthi, Secretary of the workman's union was present whereas the opposite parties were represented by Shri Upendera Kumar Sharma, Chief Welfare Officer.

6. The opposite party filed M-5, letter signed by Sri P.B. Prasad, Senior Divisional Personnel Officer, North Eastern Railway, Lucknow, enclosing circular No. 2012/F(E)III/1(I)/2 dated 29.10.2014 of the Railway Board. The management in letter M-5, referring circular dated 29.10.2014 has stated that the Railway Board, New Delhi vide their circular dated 29.10.14 has directed to cover the employees who got temporary status prior to 01.01.2004 may be covered under Old Pension Scheme.

7. A copy of the M-5 was furnished to the workman's union. The authorized representative of the workman's union sought time to consult the workman; and accordingly, the case was taken up on 28.8.2015 at Lok Adalat. The Authorized representative of the workman's union, Shri D.P. Awasthi after going through the contents of letter, M-5 and circular dated 29.10.2014 showed willingness to withdraw the present industrial dispute being claim settled; and made an endorsement thereupon as under:

"Since the relief claimed by the Union has been accepted by the opposite parties. The further proceeding of the case may kindly be dropped."

8. In view of the submission/endorsement of the workman's union for dropping of the proceedings, there is no grievance left with the workman's union as the present industrial dispute pertains to non-grant of old pension to the workman by the railway management and the management of the railway has granted the same vide circular 2012/F(E)III/1(I)/2 dated 29.10.2014 of the Railway Board. Resultantly, the industrial dispute stands settled; and no relief is required to be given to the workman concerned. The reference under adjudication is answered accordingly.

9. Award as above.

LUCKNOW. RAKESH KUMAR, Presiding Officer
24th September, 2015

नई दिल्ली, 14 अक्टूबर, 2015

का० आ० 2000.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 53/2009) को प्रकाशित

करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं०-12012/43/2009-आई आर (बी.-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.2000.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. 53/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chandigarh as shown in the Annexure, in the Industrial Dispute between the management of State Bank of India and their workmen, received by the Central Government on 14.10.2015.

[No. L-12012/43/2009-IR(B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SHRI SURENDRA PRAKASH SINGH, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I, CHANDIGARH.

Case No. ID 53 of 2009 Reference No. L-12012/43/2009-IR(B-I) dated 26.10.2009. Sh. Ashok Kumar, H. No. 3086/2, Sector 44-D, Chandigarh.

Workman

Versus

1. The Asstt. General Manager (Adm), State Bank of India, Zonal Office, Punjab & Chandigarh, Sector 17, Chandigarh.

Respondent

APPEARANCE

For the workman: Shri Raj Kaushik Advocate
For the management: Shri S.K. Gupta Advocate.

AWARD

Passed on 06.10.2015

Government of India Ministry of Labour vide notification L-12012/43/2009-IR(B-I) dated 26.10.2009 has referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Management of State Bank of India, Chandigarh in imposing the punishment of dismissal from services on Shri Ashok Kumar w.e.f. 6-8-2004 is justified? If not, what relief the person concerned is entitled and from which date?"

2. The case of the workman as per the claim statement is that he was posted at S.B.I. Sector 37-C, Chandigarh Branch when he was dismissed from service in the year 2004. His representation and appeal was also

rejected. Further the case of the workman that he was falsely implicated and wrongly suspended. He was charge sheeted vide charge sheet dated 26-12-2000 which contain the following charges:-

- "(a) while you were working at our Sector 37 Branch, Chandigarh, you along with Sh. Ved Raj, Messenger Surreptitiously removed the blank Draft Issue Security Forms Book Sr. No. A-11/478476 to A11/478500 from a Steel Almirah kept in the Lockers Room with the help of duplicate keys and handed over the same to the fraudster(s) for your own benefits. The matter came into light on 14.06.97 when an attempt at our Hissar branch was made to encash a Draft No. 478478 for Rs. 4,40,000-00 by the fraudster.
- (b) You handed-over the undermoted Draft Security Forms out of the Draft Book as stated in para (a) above to the fraudster(s) for which the bank has to suffer a pecuniary loss due to your this action. The detail is as under:-

DRAFT No.	PAYMENT DATE	AMOUNT	NAME OF PAYING BRANCH
A/11478490	28.01.98	375000/-	Jammu
478492	04.04.98	580000/-	Jammu
478484	15.05.98	360000/-	Ferozepore
478488	05.05.98	225000/-	Ferozepore
478497	29.04.98	225000/-	Ferozepore
478487	10.06.97	826000/-	Service Br. New Delhi
		2591000/-	

(c) The investigation conducted by the Police Authorities reveals that out of 25 Drafts Security Forms removed by you from the 37 Sector branch, 12 forms were recovered from your possession.

2. The above charges if established would amount to 'Gross Misconduct' in terms of para 521 (4) (j) of Sastry Award and various other Agreements/Bipartite Settlements".

3. In reply to the charge sheet, the workman denied the charges and demanded original documents for inspection in defence which were denied by the management. Enquiry was ordered and Mrs. Rassmi Duggal was appointed as enquiry officer. The enquiry officer conducted the enquiry in a haste and arbitrary manner without following the rules and procedure and proved the charges on the basis of the statement taken by the police during the custody of the workman. The workman was not allowed to lead his defence during enquiry rather, closed the proceedings without providing any opportunity of defence. The workman pleaded for declaring the enquiry

report as void-ab-initio as the report is based upon alleged statement purportedly prepared by the police under their custody by using force which is not a evidence in the eye of law. The disciplinary authority passed the dismissal order in spite of the fact that the workman was not supplied the enquiry report. It is further pleaded that there was no direct or indirect evidence produced by the management during enquiry to prove the charges. The workman prayed that reference may be answered in favour of the workman and action of the management dismissing of the workman from service be declared as illegal and void-ab-initio and may be set aside and the workman may be reinstated in service with all consequential benefits attached to his post including promotions wages revisions etc.

4. Management filed written statement. Preliminary objection has been taken that the workman was dismissed from service as a result of fair and proper enquiry in which principles of natural justice were fully complied with. The management also prayed that however, if the enquiry was vitiated on any ground for the violation of principle of natural justice, the management reserve its rights to prove the charges against the workman before this Tribunal by leading additional evidence. On merits it is pleaded by the management that work and conduct of the workman was not satisfactory and workman used to remain absent for long period. The workman was suspended earlier on the ground of moral turpitude. The workman again suspended on 22.6.97 after he was arrested by Hissar police. Workman alongwith Ved Raj had stolen 25 blank draft forms, out of which 12 were recovered from the possession of workman and workman was rightly dismissed from service in 2004 after proper enquiry and workman remained in jail till 6.9.1997. During enquiry workman was afforded several opportunities on one pretext or the other with a motive to delay the enquiry proceedings. The enquiry proceedings started on 15-6-2001 and finally concluded on 5.3.2004 during which workman was allowed several adjournments. The confession dated 20.6.97 during police custody reveals that police recovered two drafts from the workman also confessed handing over the drafts to Ved Raj, Surinder Pal @ Surjit @ Phillwan and received Rs. 70,000/- from them and there was sufficient evidence on record against the workman which proved all the charges. It is further pleaded that it is not binding on the management to drop the enquiry proceedings even if the workman is acquitted by the criminal court on one ground or the other as standard of proof in criminal proceedings and departmental proceedings are different. The management prayed that the workman is not entitled for reinstatement and any other relief and prayed for answering the reference against the workman.

5. The workman filed rejoinder reiterating the claim made in the claim statement.

6. Earlier my predecessor heard the parties on

fairness of enquiry and vide order dated 21.7.2010 declared the enquiry as vitiated by passing the following order:-

"After hearing the parties, I am of the view that it is a case of no enquiry. Enquiry was conducted by one Smt. Rashmi Duggal. On 20.9.2011 she was informed by the workman that the civil court has stopped the proceedings of the departmental enquiry. Accordingly departmental enquiry was postponed for future date. Again enquiry officer was informed that stay order by the civil court has been vacated. Accordingly she listed the departmental enquiry for 3.2.2004. on 3.2. 2004, on application of the workman, enquiry was adjourned to 5.3.2004. On 5.3.2004, the statement given by the workman during the police custody in the criminal case against him was relied upon by the enquiry officer and enquiry report was given. The enquiry officer even did not bother to refer the entire statement which was given by the workman in the police custody as an accused. It is also recorded in the proceedings dated 5.3.2004 that workman has repeatedly stated that he made his signatures on a plain paper when he was on police remand. Meaning thereby, the enquiry proceedings, report of the enquiry officer are based on the confessional statement given by the workman which he was in police custody in a criminal case. It is also admitted that in that criminal case the workman has been acquitted. Meaning thereby, there is no independent admission of charges made by the workman and I have mentioned rightly at the beginning of this order that it is a case of no enquiry. In view of the above the enquiry proceedings, report of the enquiry officer and the disciplinary proceedings against the workman are hereby vitiated. As per the provisions of the I.D. Act 1947, the enquiry shall be conducted by this Tribunal. List the case for evidence of the management for 19.8.2010. Management to lead evidence first to prove the charges."

7. The management in evidence filed affidavit of MW1 N.S. Sodhi and affidavit of MW2 Mohinder Singh who were examined and cross-examined by the counsel for the workman. MW1 N.S. Sodhi in cross examination stated that in June 1997 he was posted at S.B.I. Sector 37, branch and on 14.6.97 it came to the light of the bank that some persons is trying to encash the stolen bank draft. FIR was lodged on 18.6.97 and it is not in his knowledge that any circular was issued by the bank about the stolen draft book. The charges were issued on the same allegation as mentioned in FIR. Bank draft used to be kept in strong room. Register mentioning the Serial number used to be kept in strong room. He further stated that he cannot say who has stolen the bank draft and encashed the same. It is further stated by the witness of the management that

workman was acquitted in criminal case and he is not aware whether any appeal was filed against the acquittal of the workman.

8. MW2 Mohinder Singh, Deputy Manager, R.B.O. witness proved his affidavit as Ex. M2 and also relied on documents Ex. M4 to M21. In cross examination MW2 stated that he has no personal knowledge of the matter and he never remained posted in Sector-37 branch. In rebuttal workman in evidence filed his affidavit as Ex. W1. In cross examination workman stated that at the time of suspension he was working as Daftri in Sector 37 branch and Mr. N.K. Sodhi was cash officer. He denied the suggestion that he along with Ved Raj messenger stole a bank draft issue security form book serial no. A-11/47876 to A-11/478500. The workman also denied the suggestion that he had given one draft no. 478478 for a sum of Rs.4,40,000/- to some person in Hissar. It is further stated by WW1 workman that a police complaint was lodged by the manager for theft of the draft book on 18.6.98 and he was arrested by the police. Workman denied the suggestion that 12 drafts were recovered from him. WW1 further stated that he was convicted by the Trial Court. Workman also denied the suggestion that he made a confessional statement before the police with regard to the theft of the draft book.

9. I have heard the parties gone through the evidence and record of the case.

10. The learned counsel for the workman submitted during arguments that the enquiry conducted by the management was declared vitiated vide order dated 21.7.2010 by this Tribunal. The parties were directed to lead evidence. The management in order to prove the charges as contained in the charge sheet produced two witnesses who also submitted their affidavits. From the evidence recorded in this Tribunal and documents produced by the management, the management poorly failed to prove the charges in this Tribunal also. It is further submitted by the learned counsel for the workman that both the witnesses produced by the management did not support the charges mentioned in the charge sheet.

11. On the other hand learned counsel for the management submitted during arguments that though the workman was acquitted in appeal filed by the workman still the workman is liable for punishment in departmental enquiry because the decree of proof in criminal court and in departmental proceedings are quite different. From the perusal of the record it is clear that the workman Ashok Kumar was convicted by the Judicial Magistrate Ist Class, Chandigarh vide judgment dated 17.9.2004. Copy of the judgment has been filed on the record. Criminal case filed by the management against the workman also resulted into conviction of the workman vide order dated 18.9.2004 by Judicial Magistrate Ist Class Chandigarh. *Vide order* dated 18.9.2004 workman Ashok Kumar was sentenced to undergo rigorous imprisonment for a period of one year

under Section 411 of the Indian Penal Code and also sentenced to pay a fine of Rs. 250/- and in default of payment of fine, he will further undergo rigorous imprisonment for 15 days. Workman Ashok Kumar preferred criminal appeal No. 74 of 13.10.2004 in the Court of Additional Session Judge Chandigarh who vide its judgment dated 13.7.2006 allowed the appeal of workman Ashok Kumar and the order of sentence rendered by the Court of Judicial Magistrate Ist Class, Chandigarh was set-aside and the appellant Ashok Kumar was acquitted of the charges leveled against him. The copy of the Judgment dated 13.7.2006 has been placed on file.

12. Management cited 2007(3) RSJ page 1 Suresh Pathrella Vs. Oriental Bank of Commerce, 1997(3) RSJ page 369 Punjab Dairy Development Corporation Limited and another Vs. Kaka Singh and 2009(4) SSJ 444 U.P. State Road Transport Corporation Vs. Nanhe Lal Kushwaha. The workman cited 2009(2) SCT page 82 Roop Singh Negi Vs. Punjab National Bank and other and a judgment dated 13.3.2012 of Madras High Court In WP No. 17902 of 2009 G.R. Swamy Vs. The Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court and another.

13. As has earlier been quoted in this award, the departmental enquiry report and departmental proceedings have been quashed vide my predecessor order dated 21.7.2010 and the management was called upon to adduce evidence if any to prove the charged levelled against the workman in the charge sheet.

14. The management in evidence examined two witnesses before this Tribunal. MW1 N.S. Sodhi Deputy Manager State Bank of India and MW2 Shri Mohinder Singh Deputy Manager RBO, Sector 17B, State bank of India, Chandigarh. These two witnesses filed their affidavit also. MW1 Shri N.S. Sodhi in his cross-examination stated that "the charge was issued on the same allegation as mentioned in the FIR Bank draft used to be kept in the strong room. Audit used to be conducted of the bank". He clearly stated that "I do not know whether the bank draft were stolen in my tenure. But it is correct that theft of these bank drafts came to my knowledge during my tenure. I did not inform the the Zonal Office for not encashing the stolen bank draft". He further stated that "I can not say that who has stolen the bank drafts and encashed the same. The workman was acquitted in criminal case". MW2 Mohinder Singh witness of the management stated in cross-examination that "I have no personal knowledge of the matter except derive from the official record. During the relevant period I never remained posted in Sector 37 Branch".

15. The workman Ashok Kumar in his cross-examination stated that "it is incorrect to suggest that I had made a confessional statement before the police with regard to the theft of the draft book".

16. Perusal of the charge sheet reveals that the workman was charge sheeted for Surreptitiously removing the blank Draft Issue Security Forms Book Sr. No. A-11/478476 to A11/478500 from a Steel Almirah kept in the Lockers Room with the help of duplicate keys and handed over the same to the fraudster(s) for his own benefits and also for the following charges:

"You handed over the undernoted Draft Security Forms out of the Draft Book as stated in para (a) above to the fraudster(s) for which the bank has to suffer a pecuniary loss due to your this action. The detail is as under:-

Draft No.	Payment Date	Amount	Name of Paying Branch
A/11478490	28-01-98	375000/-	Jammu
478492	04-02-98	580000/-	Jammu
478484	15-05-98	360000/-	Ferozepore
478488	05-05-98	225000/-	Ferozepore
478497	29-04-98	225000/-	Ferozepore
478487	10-06-97	826000/-	Service Br. New Delhi
		2591000/-	

The investigation conducted by the Police Authorities reveals that out of 25 Drafts Security Forms removed by you from the 37 Sector branch, 12 forms were recovered from your possession".

17. The workman was involved in the departmental enquiry as well as in police challan on the basis of the confessional statement made by the workman. From the perusal of the judgment of the appellate Court *i.e.* Additional Session Judge Chandigarh dated 13.7.2006, it is clear that arrest and recovery of the bank draft have been disbelieved considering the defence evidence led by the workman in criminal trial. During the proceedings before this Tribunal, the management was given an opportunity to substantiate the charges levelled in the charge sheet. The case law cited by the management. *i.e.* 2007(3) RSJ page I Suresh Pathrella Vs. Oriental Bank of Commerce, 1997(3) RSJ page 369 Punjab Dairy Development Corporation Limited and another Vs. Kaka Singh and 2009(4) RSJ 444 U.P. State Road Transport Corporation Vs. Nanhe Lal Kushwaha. The facts and circumstances of the case laws cited by the management are quite different from the facts and circumstances of the present case. Therefore, these are not applicable to the case of the workman.

18. As stated earlier the management could not lead any evidence which could substantiate the charges as mentioned in the charge sheet and the enquiry report and the enquiry proceedings have already been set aside *vide* order dated 21.7.2010 by my predecessor.

19. From the record it is revealed that the workman was appointed in the bank as messenger in the year 1980(4.6.1980) and served there till his dismissal from service. The management in para 2 of its reply submitted that the work and conduct of the workman was not satisfactory. The workman used to remain absent long periods without any intimation and prior permission from the competent authority. The workman remained suspended *w.e.f* 30.3.1983 on the ground of moral turpitude and was there after reinstated on 6.11.1984. the management also submitted that the workman was held guilty and convicted by Judicial Magistrate Ist Class, Chandigarh *vide* its judgment dated 18.9.2004 and was given benefit of doubt by the Appellate Court *vide* its judgment dated 13.7.2006. It is further submitted that considering these facts the workman has lost trust and confidence of the management.

20. Considering the entire facts of the present case, the reinstatement of the workman is not proper. The workman may be suitably compensated in terms of money in lieu of reinstatement. In Civil Appeal No. 4980 of 2014 Tapash Kumar Paul Vs. BSNL and anr. Decided on 28.01.2014, the Hon'ble Supreme Court has observed as under:

"It is no doubt true that a Court may pass as order substituting an order of reinstatement by awarding compensation but the same has to be based on justifiable ground *viz.* (1) where the industry is closed: (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and /or (iv) when he has lost confidence of the management to discharge duties. What is sought to be emphasized is that there may be appropriate case on facts which may justify substituting the order of reinstatement by award of compensation."

21. Considering the facts and circumstances of the case, the order of dismissal is set aside. But in lieu of reinstatement, the workman is awarded one time lump sum compensation of Rs. 500000/- (five lakhs only). The management is directed to pay the above amount to the workman within one month from the date of publication of the award.

22. The reference is answered accordingly. Central Govt. be informed. Soft as well hard copy be sent to the Central Govt. for publication.

Chadigarh.
06.10.2015

S.P. SINGH, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2015

कांआ 2001.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारतीय स्टेट बैंक प्रबंध तंत्र के सबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पंचाट (संदर्भ संख्या 9/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 प्राप्त हुआ था।

[सं.एल-12011/67/2008-आईआर(बी-1)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.2001.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 9/2011) of the Cent.Govt.Indus.Tribunal-cum-Labour Court No.1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of State Bank Of India and their workmen, received by the Central Government on 14/10/2015.

[No. L-12011/67/2008-IR(B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D.Act.
1947.

Reference: No.9/2011

Parties: Employer in relation to the management of State
Bank of India, Patna

AND

Their workmen.

Present : Sri R.K.Saran
Presiding Officer.

Appearances:

For the Employers : Shri Noor Aalam, Rep.
For the workman : Shri G.K.Verma, Rep
State : Bihar

Industry:- Banking
Dated: 24/9/2015

AWARD

By Order No.L-12011/67/2008-IR -(B-I) dated 17/01/2011 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of SBI Patna in terminated the service of S/Sh (1) Ashok Kumar (2) Sh. Pramanand Singh (3) Sh. Stendra Singh (4) Ajay Prasad Srivastava (5) Binay Kumar Sinha (6) Rabindra Kumar (7) Sh. Nand Kishore Ram (8) Sh. Suchita Ram (9) Sh. Jai Prakash Singh (10) Sh. Sunil Kumar (11) Arjun Kumar Singh (12) Prabhat Kumar and (13) Vijay Kumar Singh w.e.f 02/06/2007 is legal and justified ? To what relief the concerned workmen are entitled?"

2. The case is received from the Ministry of Labour on 08.04.2011. After notice both parties appeared. The Sponsoring Union files their written statement on 18.01.2012 and Supplementary written statement received on 15/02/2012. The Management files their written statement-cum- rejoinder on 20.06.2012. Thereafter the workman files their rejoinder and document. One witness is examined on behalf of the management as MW-1 and documents of management marked as M-1 to M-3 . But nine witnesses examined on behalf of the workman as WW-1 to WW-9 as well as documents of workman marked as W-1 to W-33 Series.

3. The short point that is involved in this case whether the termination of workman by the Bank is legal and justified or not.

4. The case of the workman is that during the conciliation proceeding the Bank management terminated the service of the concerned workmen without taking permission of the then conciliation Officer in violation of section 33 of the I.D Act, 1947, and prior to termination of the workman they were not served any notice or wages as per Section 25 F. of I.D. Act.

5. They also claimed that they were appointed by the Bank management after interview, and they were rendering service continuously but the Bank Management without any rhyme and reason asked them not to come bank to work.

6. It was asserted that all the above noted employees were appointed at the said branch after interview and since their appointment , they performed full time work on all working days and thus they worked for more than 240 day in each and every calendar year in the post uninterruptedly, but the Bank management continued exploiting the workman by keeping them on daily wager under the control and direction of the said Branch Manager of the Bank.

7. It is also stated that the appointment of all the 13 workmen was made against the vacant post of subordinate cadre after termination of these 13 workmen, the Bank management has appointed 13 new hand who have been working in the place of the workmen were terminated during the pendency of conciliation proceeding before the ALC (C) Patna. The conciliation failed due to the rigid attitude of the management . The workman No.1 to workman no.13 of the reference were working with the

management from the year 1983 to 2000. There are several judgments is available, one of them 1960 LLJ 504 SC that if retrenchment is held as illegal and invalid for non compliance of mandatory requirement of section 25 F, it is imperative for the Tribunal to award the relief of reinstatement with full back wages.

8. The case of the management is that no appointment letter was ever issued to them, they were daily wagers, they were working under a contractor , the payment etc. used to be made by the contractor etc. Nothing also has been referred to demonstrate that their engagement was against any sanctioned post and the job which they were performing is not permanent nature. It is totally incorrect to say that the 13 concerned persons had been working in the bank in any capacity as employee duly appointed after following the rules of recruitment against any sanctioned post. They might be working on the basis of as and when required on contract basis and used to be paid by the contractor on day basis. They might be daily wagers on the basis of as and when required. The question of their working for so many years and that to continuously does not arise.

9. I find that the management have appeared and filed written statement stating that the reference is not maintainable and the workmen are not entitled for relief as claimed and the anagement also stated that the workmen were never engaged by bank management.

10. The workman adduced nine witnesses namely Jai Prakash Singh (WW-1). Sri Sachita Ram (WW-2), Sri Parmanand Singh (WW-3), Sri satyendra Singh (WW-4) , Binay Kr. Sinha (WW-5), Vijay Kr. Singh (WW-6), Ashok Kumar (WW-7), Prabhat Kumar (WW-8), Sri Sheo Bachan Prasad (WW-9) In support of their claim the workman files voluminous document which is marked and W-1 to W-33 series.

11. One witness adduce on behalf of the management namely Dinesh Kumar (MW-1) he stated in his cross examination that I have not seen any record before coming to depose in the case. And he also says that I can not say whether the bank taken workmen from licensed contractor. Again says, I call not say whether the present workman was taken by bank from licensed contractor or unlicensed contractor.

12. In Ext. W-19 one memorandum issued by the Bank management to Sri parmanand Singh for appear once on 28.03.97 with all document to the post of subordinate staff for interview. In Ext W-2 payment voucher of same person from 1987 to 1988 this shows that shri parmanand singh is appointed after interview.

13. In Ext. W-3 one letter written by Asstt. General Manager to Dy. General manager, in which he recommended for absorption of workmen as permanent in the bank as electrician or any other subordinate post and he has also

admitted that he was working in the branch since 1985. in another letter Asstt. General Manager wrote to Dy. General Manager Zonal Office that a post of Electrician should be sanctioned at this Branch and Sri Satyendra Singh should be permanently absorbed as Electrician.

14. In Ext. W-8 one letter written by Bank Officer to the Secretary, Bihar Bidhan Sabha, Patna in which he request to issue Identity Card in the name of sachita Ram designated as Peon (Aadeshpal) for this letter the Bihar Bidhan Sabha, issued I.D designated as Aadeshpal.

15. In Cross examination of WW- I, he says that daily wage worker's attendance was taken on plain paper.

16. The workman is also pointed out that they were never the employee of the contractor and never received payment by contractor and they were directly working under the bank management and getting payment from the management which is clear from the vouchers.

17. On perusal of voluminous document of workman and several photocopy of cheques it is clear that the management create the camouflage, and the Bank management terminated the service of the concerned workmen without taking permission of the then conciliation proceedings Officer in violation of section 25 F and prior to termination of the workman not serving any notice or wages is illegal.

18. Considering the facts and circumstances and perusal of the documents, it is clear that the management has violated the 25 F of I.D Act, I hold that the action of the management of SBI Patna in terminating the service of S/Sh (1) Ashok Kumar (2) Pramanand Singh (3) Stendra Singh (4) Ajay Prasad Srivastava (5) Binay Kumar Sinha (6) Rabindra Kumar (7) Nand Kishore Ram (8) Suchita Ram (9) Jai Prakash Singh (10) Sunil Kumar (11) Arjun Kumar Singh (12) Prabhat Kumar and (13) Vijay Kumar Singh *w.e.f.* 02/06/2007 is not legal and justified. Hence all be reinstated in Bank from the date of receipt of reference but without back wages.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 14 अक्टूबर, 2015

का. आ. 2002.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैसर्स/एस०आई०बी० सेवा प्रा० लिमिटेड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कोलकाता के पंचाट संदर्भ (संख्या 05/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं० एल.-12011/01/2015-आई आर (बी-1)]
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14, October, 2015

S.O. 2002.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2015) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of M/s. S & IB Service Pvt. Ltd. and their workmen, received by the Central Government on 14.10.2015.

[No.L-12011/01/2015-IR (B-1)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Ref. No. 05 of 2015

Parties: Employers in relation to the management of
M/s. S & IB Services Pvt. Ltd.

AND

Their workmen

Present: Justice Dipak Saha Ray,
Presiding Officer

Appearance:

On behalf of the : Mr. A.K. Gautam, Assistant
Management : Manager.
None for M/s. S. & IB Services
Pvt. Ltd.

On behalf of the : None
Workmen

State: West Bengal. Industry: Banking

Dated: 28th September, 2015.

AWARD

By Order No. L-12011/01/2015-IR(B-I) dated 17.02.2015 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this tribunal for adjudication.

"Whether the action of the management of M/s. S & IB Services Pvt. Ltd. is justified by terminating the service of Sri Soumitra Podder is legal and/or justified? If not, what relief the workmen are entitled to?"

When the case is taken up today for hearing, none appears either on behalf of Bank Employers' Federation or on behalf of M/s. S & IB Services Pvt. Ltd. inspite of service of notice. It appears from the record that the Bank Employers' Federation at those instance the present reference has been initiated has not turned up for 4 (four) consecutive dates.

3. Considering the facts and circumstances, it appears that the Bank Employees' Federation is not at all willing to proceed with this case. So, no fruitful purpose will be served in keeping the matter pending.

4. In view of the above, present reference is disposed of by passing a "No Dispute Award".

JUSTICE DIPAK SAHARAY, Presiding Officer
Kolkata, the 28th September, 2015.

नई दिल्ली, 14 अक्टूबर, 2015

का. आ. 2003.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आई डी बी आई बैंक प्रबंध तंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण दिल्ली के पंचाट संदर्भ (संख्या 97/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 14/10/2015 को प्राप्त हुआ था।

[सं. एल. -12012/43/2012-आई आर (बी-1)],
सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 14th October, 2015

S.O.2003.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 97/2012) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of IDBI Bank and their workmen, received by the Central Government on 14/10/2015.

[No. L-12012/43/2012/IR (B-1)]
SUMATI SAKLANI, Section Officer

ANNEXURE

**IN THE COURT OF SHRI AVTAR CHAND DOGRA,
PRESIDING OFFICER, CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT
NO. 1, KARKARDOOMA
COURT COMPLEX, DELHI**

ID No. 97/2012

Shri Amarjeet,
S/o Shri Shiv Kumar,
R/o Flat No. 3 Type 4,
Upper Sub-station,
West Kidwai Nagar, New Delhi Workman

Versus

IDBI Intech,
Tiwari House,
11-B/8,
Pusa Road,
New Delhi 110060Management

AWARD

Factual matrix giving rise to the reference is that the claimant herein was appointed with IDBI Bank initially at Jhandewalan branch, New Delhi on 20.06.2007 and his salary was being credited in the bank account of the claimant bearing No. 17210400001845. Thereafter, he was transferred to Pusa Road branch as Back Office Executive and was shown as Data Entry Operator, which was purely clerical job. Claimant was working under supervision and direct control of IDBI officials. It is also averred that the management herein is a wholly owned subsidiary of IDBI Bank, established in the year 2000, having common Directors in IDBI Bank and the management. Claimant was not issued any letter of appointment at the time of his initial appointment nor was he provided any pay slip or any other details of his salary by IDBI Bank in spite of his repeated demands. Claimant worked continuously with IDBI Bank since 20.07.2007 till 30.10.2010 when his services were illegally terminated.

2. There are allegations that the workmen used to sign attendance of IDBI Bank along with other employees and as such claimant herein is presumed to be in service of IDBI Bank and IDBI Intech Ltd. are one and the same. Claimant herein worked honestly, diligently and sincerely till 30.10.2010 and his services were illegally terminated and during his tenure with the management, claimant had an unblemished record. Termination of the job of the claimant herein is in violation of provisions of labour laws as well as principles of natural justice.

3. In para 9 of the statement of claim, claimant herein had given sequence of acts which led to termination of his job. As mentioned above, claimant was appointed on 20.06.2007 on the post of Back Office Executive, which was purely clerical and at no point of time, he was assigned any supervisory work and no employee was working under him. In the month of November 2008, management got signatures of the claimant on various documents alleging the same are required by Head Office of the bank at Mumbai for regularization of services of the claimant herein. Thereafter, management issued letter on 08.11.2008 with employee Code No. FOS 11655 purported to be the appointment letter. From this letter, it was revealed that salary of the claimant in November 2000 was Rs. 5000.00, which was credited to the account of the claimant directly without issuing any pay slip. Prior to this, salary of the claimant used to be credited to his bank account from the account of M/s Interpro. maybe the other wholly owned subsidiary of IDBI Bank. Copy of the letter of appointment is Annexure A. Management never supplied to the claimant terms and conditions of service, which is also unfair labour practice on the part of IDBI Bank. Management also used to make some deductions from the salary account of the claimant herein in lieu of ESI, EPF etc.

4. It is specifically alleged that on 15.09.2010, one of the officials, *i.e.* Deputy General Manager of IDBI Bank threatened the claimant herein as well as other employees in Data Entry Section using indecent and foul language. He also threatened that those who refused to do extra hours of work will be thrown out for defiance of the directions of the management. On 15.09.2010, when claimant herein, along with his colleagues were taking tea in the canteen at around 3 p.m. and were making discussions regarding claim of overtime allowance or some other compensation in lieu thereof for extra work taken regularly by the management, one Shri Francis entered the said canteen and shouted at the employees, abused them and also threatened them with dire consequences. Since the abuses and threats of Mr. Francis were intolerable, as such the workman made a call at 100 and complained about the indecent behaviour and matter was also reported to the police with DD No. 19-A dated 15.09.2010 at Police Station Rajinder Nagar, New Delhi. Copy of DD is Annexure C.

5. Management got annoyed on account of the above complaint lodged by the workmen and immediately terminated services of the workmen, including the claimant herein, *vide* letter dated 30.10.2010 without any just reasons and grounds. His termination is illegal, *mala fide*, unwarranted and invalid under the law.

6. During the conciliation proceedings, the management filed copy of letter dated 17.09.2010 issued under the signatures of Shri Vimal Singh, Centre Manager (North), which was addressed to Head (Operations), OBST IDBI Intech Ltd. Mumbai, taking false and frivolous grounds therein. The said letter is false and fabricated, copy of which is Annexure F. Thereafter, Government of India *vide* letter No. L-12012/43/2012-IF(B-I) dated 30.08.2012, referred the matter to this Tribunal and terms of the reference are as under:

"Whether the action of the management of IDBI Intech in terminating the service of Shri Amarjeet, S/o Shri Shiv Kumar with effect from 30.10.2010 is legal and justified?"

7. After issuing notice to both the parties, claimant herein filed statement of claim and management filed written statement to the above statement of claim, taking preliminary objections, *inter alia*, that there is no merit in the claim as claimant, Shri Amarjeet was appointed in the company as Back Office Executive on fixed term contract *vide* appointment letter dated 08.11.2008. No doubt, he was informed about the rules and thereafter he signed letter of confirmation containing terms and conditions of his employment. Claimant, Shri Amarjeet is bound by the said terms and conditions. It is also alleged that on 15.09.2010, Shri Amarjeet and some other members, instigated by him to report late for work started showing indisciplinary attitude. They refused to abide by the requests made by the concerned authority and created ruckus in the office by shouting slogans against the authorities and threatened him with dire consequences. It is also alleged that the

dispute raised by Shri Amarjeet is illegal and unjustified. Shri Amarjeet was engaged on fixed term contract. Company has followed the process of law while terminating his services. As such, termination of services of the claimant is *bonafide*, legal, justified and in accordance with the terms of contract. On merits, management has denied material averment regarding wrongful termination of services of the claimant herein.

8. Against this factual background, my learned predecessor *vide* order dated 11.01.2013 framed the following issues:

- (1) Whether action of the management in terminating services of the claimant amounts to retrenchment?
- (2) Whether claimant is a workman within the meaning of section 2(s) of the Industrial Disputes Act, 1947?
- (3) As in terms of reference.

9. Claimant in order to prove case against the management examined himself as WW1 and also tendered in evidence documents relied upon by them. However, management opted not to lead any to rebut the case of the claimant.

I have heard Shri Om Prakash Sharma, authorized representative for the claimant and Shri Pratyush Parimal, authorized representative for the management.

Finding - Issue No.1

10. Shri Om Prakash Sharma strongly contended that in the case in hand, it is proved from the record that the claimant Shri Amarjeet was offered job of Data Entry Operator on 20.06.2007 and he was performing his duties honestly and sincerely. It was strongly urged that no enquiry was held in the present case before issuance of the order of his termination. Even show cause notice was not served upon the claimant, as such action of the management in issuing letter of termination 3 1 . 1 0 . 2 0 1 0 Ex. WW1/8 is total illegal and against the principles of natural justice.

11. Secondly, learned authorized representative for the claimant proceeded to argue that in fact IDBI Bank and IDBI Intech Ltd. are one and the same thing in as much as IDBI Intech Ltd. management herein is subsidiary of IDBI Bank. Since IDBI Bank is the principal employer and no certificate of registration has been filed by the management herein so as to show that the management was having licence to engage contract labour/casual employee etc. as such, in the absence of such registration, claimant herein would be considered to be employee of the principal employer and provisions of the Industrial Disputes Act would be applicable in case of illegal termination of his services. Learned authorized representative also relied upon a few judgements and I would be referring to the ratio of the same while drawing my conclusions.

12. Per contra, Shri Pratyush Parimal, authorized representatives appearing on behalf of the management defenced action of the management in terminating services of the claimant, Shri Amarjeet. The learned authorized representative urged that initial enquiry was held by the management and it was found that the claimant herein is indulging in indiscipline and as such committed misconduct. It was because of all these reasons that services of the claimant herein were terminated *vide* order dated 31.10.2010, Ex.WW1/8. Before issuance of the above order, management has conducted investigation and copy of the report is dated 17.09.2010, which is Ex.WW1/9.

13. Before, I proceed to consider comparative merits of the submissions based on behalf of either of the parties, it is necessary to recapitulate certain admitted facts having bearing on merits of the case. It is neither in doubt nor in dispute that the claimant, Shri Amarjeet was appointed/engaged by IDBI Delhi branch and approval of his appointment is evident from Ex.WW1/1. It is further clear from perusal of the appointment letter dated 08.11.2008 Ex.WW1/2 that the claimant herein was appointment for a fixed term contract period of three years from the date of joining and his initial place of posting was RPU Delhi branch. During the course of arguments, attention was drawn to clause 10 and 11 of the above appointment letter, Ex.WW1/2 wherein it is clearly provided that in the event of any wilful or continued neglect of duty or any other serious misconduct or breach of this contract on the part of the workman, the company reserves the right to terminate employment forthwith and without any previous notice or payment in lieu of notice. Clause 11 further provides that his performance would be monitored by the management for first six months and in case his performance is not found to be satisfactory, his services would be terminated without any notice.

14. It is now well settled position in law, that not only judicial or quasi-judicial authorities, even in undertaking or departments, performing of administrative duties, are required to follow principles of natural justice while making any adverse order against workmen, dehors conditions of employment mentioned in letter of appointment. In the case of *Govindaraju Vs. Karnataka SRTC* (1986) 3 SCC 273 while dealing with the case of temporary/badli employees whose services were terminated on the ground of unsuitability, in terms of the stipulations contained in the regulations, it was held that compliance of minimum requirement of natural justice by affording opportunity of explanation was essential before taking any adverse action against such workmen. Consequently, in the absence of any such opportunity or show cause notice, order of termination is rendered null and void being inconsistent with principles of natural justice. There is a long line of decisions to this effect where similar view has been taken by the Hon'ble Apex Court as well as various High Courts in the country. Learned authorized representatives for the management

could not cite any ruling to the contrary wherein it has been held that an order passed in violation of principles of natural justice, *i.e.* without issuance of show cause notice or fact finding enquiry can be sustained in the eyes of law.

15. There is a glaring blunder committed by the management in the present case, which cannot be easily ignored and this Tribunal wants to place on record pernicious manipulation committed by the management so as to put an end to the career of the workman. In this regard, it is appropriate to refer to letter dated 17.11.2010, Ex.WW1/9, which in fact is an investigation report regarding ruckus created by OBST employees in Delhi on 15.09.2010. Undoubtedly, action taken against the claimant herein is in respect of an incident alleged to have taken place on the above date, *i.e.* 15.09.2010. As is clear from pleadings of the parties, allegations against the claimant herein was regarding misbehavior and abuses which he has hurled along with his co-employees, against the official of the management. It is further clear from contents of the letter (investigation report) that in the enquiry, it was found that five members were responsible for the above incident for instigating whole group over trivial issues which snow balled into a major crisis. Name of the claimant herein, Shri Amarjeet, is mentioned as serial No.1 along with 4 other employees. In the end of letter (investigation report) WW1/8, is it mentioned as under:

'On the basis of the above mentioned information, subsequently notice of termination of service was given on 30.10.2010.'

16. It is really strange that when the letter is alleged to have been written on 17.09.2010, how there can be mention of date of 30.10.2010, which will come more than one month thereafter. It is pertinent to note here that services of the claimant along with 4 other employees, was dispensed with on 30.10.2010, as is clear from letter of termination Ex.WW1/8. It is crystal clear that, in fact, letter dated 17.09.2010 (investigation report) was prepared at the time of preparation of termination letter Ex. WW1/8 and this was purportedly done so as to show that a fact finding enquiry was conducted by the management so as to take adverse action against the delinquent employees. Thus, entire action of the management in the present case smacks of fabrication & manipulation and this Tribunal cannot ignore the fact that on the date of incident, *i.e.* 15.09.1990, claimant and other co-employees have lodged DDNo. 19- A dated 15.09.2010.

Findings - Issue No.2

17. Now, the next vital question in the case in hand is as to whether claimant herein is a workman within the meaning of Section 2(s) of the ID Act. During the course of arguments, it was strongly urged on behalf of the management that the claimant does not fall within the definition of workmen as his job was supervisory in nature. In fact, he was holding a managerial post, as such, case of

the claimant cannot be adjudicated by the Industrial Tribunal inasmuch as the claimant herein does not fall within the definition of workman. On the other hand, Shri Sharma strongly urged that letter of appointment as well as salary slip clearly shows that the claimant herein was not performing any managerial or supervisory job. As such, merely use of nomenclature even as supervisor etc. would not confer upon him the status of manager nor would rob the job of this tribunal of its jurisdiction to adjudicate the matter. In this regard, it is pertinent to refer to letter of appointment Ex.WW1/2, which clearly shows primary job of the claimant herein as 'business development of all products of the bank' and he was given total salary of Rs.6274.00. Further, letter of approval Ex.WW1/1 nowhere suggests that the claimant, Shri Amarjeet was given an kind of managerial work or any employee had at any point of time was working under his so as to prove that the claimant herein was performing managerial functions. Pay slip Ex.WW1/4 and Ex.WW1/5 also mentions about the total salary of the workman. It is also evident from pay slip for the month of August 2010 Ex. WW1/4 and Pay slip for the month of June 2010 Ex. WW1/5 that salary of the claimant was much below the limit of Rs. 10,000.00 and there is no mention of any managerial functions in the said pay slip or any other document placed on record.

18. It is not out of place to mention here that management in the present case did not lead any evidence so as to rebut the case of the claimant. Resultantly, the Tribunal cannot accept the plea of the management, without any oral or documentary evidence that the claimant was holding a managerial post.

19. It has been held in the case of Devinder Singh Vs. Municipal Council AIR(2011) SC 2532 that expression 'workman' is to be given a very wider meaning as used in the Industrial Disputes Act. The source of employment, the method of recruitment, the terms and conditions of employment/contract of service, the quantum of wages/pay and the mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only a person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.

20. There is another aspect of the matter which cannot be ignored. Letter of termination dated 30.10.2010, Ex. WW1/8 clearly shows that the claimant herein was working on contract as Back Office Executive with effect from 18.08.2008 for a period of three years on terms of

employment *vide* letter dated 08.11.2008. There is no mention in this letter that services of the claimant herein are being terminated on account of misconduct or misbehavior. Rather, it simply shows that 'your services are no longer required' and stand terminated with immediate effect from the close of hours on 30.10.2010 as per clause 10 and 11 of contract of appointment dated 08.11.2008 Ex. WW1/2. As discussed above, clause 10 and 11 of the above letter of appointment cannot override the provisions of the Industrial Disputes Act and principles of natural justice, which have not been followed at all in the case in hand. Since services of the claimant herein have been terminated before expiry of the period of three years and that too without holding any enquiry or issuance of show cause notice, as such the same is held to be wrong and illegal. Both the issues are decided accordingly in favour of the workman.

21. As a sequel to my discussions above, the order of termination dated 30.10.2010 passed by the management against the claimant herein is totally wrong and illegal and as such liable to be set aside. Consequently, claimant herein is ordered to be reinstated with all consequential benefits on the post which the claimant was holding on the date of his termination, *i.e.* 30.10.2010. There is nothing on record to suggest that the claimant herein was not gainfully employed during the period of termination till the date of filling of the present reference. In such circumstances, Tribunal is of the view that the claimant is entitled for 50% of back wages.

Dated: August 20, 2015 A.C. DOGRA, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2004.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ बड़ोदा के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (95/03) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.10.2015 को प्राप्त हुआ था।

[सं० एल-12012/2/2003-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2004.—In pursuance of Section 17 of the Industrial Disputes, Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.95/03) of the Cent.Govt.Indus.Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of Baroda and their workmen, received by the Central Government on 15.10.2015.

[No. L-12012/2/2003-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT, JABALPUR****NO. CGIT/LC/R/95/03**

Shri Mohanlal S/o Shri Pooranlal Patel,
Village Mankari,
PS-Maharajpur,
Chhattarpur (MP)

... Workman

Versus

Regional Manager,
Bank of Baroda,
Regional Office,
LIC Building,
Jeevan Beema Marg,
Raipur.

... Management

AWARD

Passed on this 21st day of July 2015

1. As per letter dated 19.5.03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12012/2/2003-IR(B-II). The dispute under reference relates to:

"Whether the action of the Regional Manager, Bank of Baroda, Raipur and Branch Manager, Bank of Baroda Maharajpur Branch, Distt. Chhattarpur in terminating the services of Shri Mohanlal Patel *w.e.f.* 13.12.2000 is justified and legal? If not, what relief the workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at Page 2/1 to 2/4. Case of workman is that he was working with 2nd party from 16.5.88. He was orally terminated on 13-12-2000 without assigning any reasons. Any chargesheet was not issued to him. No enquiry was conducted. Workman was not given opportunity of hearing. Workman was continuously working more than 240 days. He acquired status of permanent employee. His services could not have been terminated in violation of statutory provisions. Principles of natural justice were not followed while terminating his services. He was terminated by way of victimization under colourable exercise of powers. Act of 2nd party amounts to unfair labour practice.

3. Workman further submits that provisions of Section 25-F of ID Act were not complied. Principles of Ist come last go was not followed. Permission from appropriate Government for termination of his service was not obtained. Therefore termination of his service is illegal. Workman is not gainfully employed. His family lives in starving condition. On such ground, workman prays for reinstatement with backwages.

4. 2nd party filed Written Statement at Page 7 opposing claim of Ist party workman. Preliminary objection is raised by 2nd party that Government has made reference assuming certain facts which were not existing. The reference is made without application of mind is not tenable.

5. 2nd party submits that workman was never appointed in Bank. He was not on roll of the Bank. Workman was intermittently engaged for 2 days for casual nature of work. Workman was paid wages. He was not employee of the Bank. In 1988, workman worked for 66 days, in 1989 for 90 days, in 1991 for 43 days. Workman have not completed 240 days continuous service in any calendar year. Workman was offered job of casual nature whenever available. The engagement of workman on daily wages indicates his engagement subject to availability of work. He may be given work next day of his engagement if available. Workman was not obliged to report on duty next day. The rules for direct recruitment and selection were not followed. As workman was engaged on daily wages, his disengagement is covered under Clause 2(oo)(bb) of ID Act. The disengagement of workman doesnot amount to retrenchment.

6. 2nd party further submits that Branch Manager has no authority to appoint any employee including sub staff. The Regional Manager and Officer of higher rank are employed to appoint employees in the Bank. Violation of Section 25-F of ID Act is denied. It is submitted that workman has not covered under Section 25 B of ID Act is not entitled to protection of Section 25-F of the Act. The Bank had decided to discontinue all casual employees. The branch offices of the Bank were instructed by various communications not to engage any person on temporary or casual basis as a one time exemption from Government of India, Ministry of Labour, relaxation was obtained during 1995 for the recruitment of 681 casual employees. It was subject to conditions that Bank will comply with all the instructions regarding reservation of SC/ST, Physically Handicapped, Ex-servicemen upto required percentage of reservation of persons belonging to those categories. That Bank will refrain from seeking any further exemption from the DGE&T with regard to relaxation granted as one time measure. That Bank will ensure recruitment of persons in both the posts through Employment Exchange and comply with all provisions of Employment Exchange Act, 1959 strictly. Bank will furnish six monthly report regarding filling up the vacancies of SC/ST etc. categories. As sufficient vacancies were not available in the Bank for recruiting all 681 persons from different parts of the country. Most of them are given appointment in fresh manner and waitlisted for appointment against future vacancies though exemption was allowed by government in the 1995. Name of workman did not appear in list of 681 persons. It is further submitted that the directions of Government with regard to employment of cadre of sub staff to Employment Exchange are mandatory. The statutory bodies and Government

organization should notify vacancies from Employment Exchange.

7. That Bank is public employment covered by employment under State and Constitution of India under Article 16 of the Constitution equal opportunity for such employment to all citizen. It is reiterated that in recruitment process, compliance of reservation criteria in respect of SC, ST, OBC, Physically Hadicapped and Ex-Servicemen is mandatory. The service conditions of sub staff divided in categories clerks and sub staff are governed by Sastri Award, Desai Award. The regular employees are given benefits of privilege leave, 12 days of Casual Leave, one month sick leave per annum. Therefore casual workers are required for carrying the work. The person who is engaged on temporary basis on stop gap arrangement without following recruitment rules cannot claim permanent status. 2nd party has referred to ratio held in various cases by Supreme Court and High Court emphasizing that claim of workman cannot be accepted. 2nd party has reiterated that workman was not appointed following recruitment rules. He was engaged for casual nature of work. There is no relationship of employer and employee between parties. Workman never enjoyed status of permanent employee in the Bank. The discontinuation cannot be said retrenchment. Workman has not completed 240 days service during any calendar year. The claim of workman is false and mischievous. Bank has not violated any settlement. On such ground, 2nd party prays reference be answered in its favour.

8. Workman filed rejoinder reiterating his contentions in statement of claim. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | | |
|------|---|---------------------|
| (i) | Whether the action of the Regional Manager, Bank of Baroda, Raipur and Branch Manager, Bank of Baroda Maharajpur Branch, Distt. Chhattarpur in terminating the services of Shri Mohanlal Patel <i>w.e.f.</i> 13-12-2000 is justified and legal? | In Negative |
| (ii) | If not, what relief the workman is entitled to?" | As per final order. |

REASONS

9. Workman is challenging termination of his service for violation of Section 25-F of ID Act. Claim of workman is opposed by 2nd party. workman filed affidavit of his evidence supporting his claim in statement of claim. In his affidavit of evidence, workman says that he was working with 2nd party from 16-5-88. His services were terminated on 13-12-2000. That he was working continuously

during the intervening period. Considering pleadings, 240 days continious service during each of the calendar years. He had submitted application after notice was displayed in the Bank. He was interviewed on the same day and appointed by 2nd party as peon. Appointment letter was not issued to him, that he was working against vacant post. He was terminated without enquiry, notice was not issued to him. He was not served with any chargesheet. Termination notice was not given to him, he was not paid retrenchment compensation. Workman was cross-examined extensively. In his cross-examination, workman says he was having Saving Account in the Bank from 1987. He did not recollect Account No. he was paid in cash in hand. Wages were not deposited in the account. He was visiting the Bank. On 15-5-88, he had gone to the Bank. After he had seen notice of vacancy on notice board, he submitted application on 16-5-88. Certificate of work was not issued to him. His attendance was maintained in small register. His signature was obtained in said register. The register was kept the Daftary working in the Bank. His name was not sponsored through Employment Exchange. He was unable to tell the period of work of Branch Manager Shri Umakant Ganvir. On his request, Shri Umakant has issued certificate of his working, document produced at Exhibit W-10. Copy of application Exhibit W-9. Workman denied suggestion that Shri Umakant Branch Manager not issued certificate to him. He had obtained payment voucher from Bank. He was paid wages for the working days. Workman was unable to tell working days of particular year. In his further cross-examination, workman says Shri Chiranjilal Kushwaha is working as peon in the Bank from 14-12-12. Shri Chiranjilal himself told about it to him.

10. Management filed affidavit of evidence of Shri Umakant supporting contentions of 2nd party in Written Statement that workman was engaged as casual work. He was not appointed by the Bank. Workman was given job of casual nature available in the Bank. He was reimbursed for his engagement. Workman had worked for 66 days in 1988, 89 days in 1990, 43 days in 1991 on daily wages. Bank had decided to discontinue casual employees. As one time exemption from Government of India, Ministry of labour. Relaxation was obtained in 1995 for recruitment of 681 casual employees excluding the provisions of Employment Exchange Act, 1959. Name of workman was not found in those 681 persons who were from different parts of the country. Workman was not appointed by Competent Authority. There was no question of his retrenchment. Workman had not completed 240 days continuous service during any of the calendar year. Management's witness in his cross examination says that he was working at Maharajpur Branch from 9-9-98 to February 1999. That he had seen available record, certificate produced by workman. Workman was not working during his tenure. Management's witness claims ignorance during his period workman worked in the Bank

but his name was not found in the muster roll. Affidavit of his evidence was drafted with his consent. As per record submitted by workman, the management's witness said workman had not completed more than 240 days working. Muster roll was not brought by him. The suggestion is denied that workman was continuously working during 1988 to 2000. It is clear that management's witness has no personal knowledge as Ist party workman was not working during his tenure. Management has not produced muster roll seen by management's witness. Copy of applicant submitted by workman is produced at Exhibit W-9. The certificate of working is produced at Exhibit W-10. In Certificate Exhibit W-10, it is certified that workman was working in the Bank from 16-5-88 to 6-2-99.

11. The documents produced by workman Exhibit W-1 is copy of notice of strike given by Union Secretary dated 16-1-01. Exhibit W-2 is notice of conciliation proceeding before RLC. Exhibit W-4 is notice issued by ALC, W-5 is reply submitted by Regional Manager before ALC. Exhibit W-6 is reply filed by workman before ALC. In any of those documents, workman was continuously working from 1988 to 2000 is not admitted by 2nd party. Exhibit W-7 is copy of order of reference. Payment vouchers produced by workman Exhibit W-8 (a to g) are for the year 1996, 1999, 2000 intermittently working. Exhibit M-1 produced by 2nd party is copy of entries in cash book dated 30-1-99 pertains to entries of expenses. Said document does not show any of the amount was paid to Ist party workman. Payment vouchers produced by management at Exhibit M-2 to M-90 pertains to payments in year 97 to 2000. The legality of termination of workman from 13-12-2000 is in dispute. Workman alleged that his services are terminated in violation of Section 25-F of ID Act. Therefore it needs to be considered whether workman completed 240 days during 13-12-99 to 12-12-00.

12. Workman had submitted application for production of payment vouchers, peon book, attendance register for the year 88 to 2000. 2nd party has not produced all those documents. However payment vouchers Exhibit M-2 to M-90 are produced. Payment vouchers Exhibit M-47 to M-89 are for the period 14-12-99 to 2-12-2000. On reverse side of all those documents produced by management, signatures of Ist party are appearing except few vouchers, name of Ist party workman is shown in respect of amount paid. Amount paid to Ist party workman under those vouchers is shown Rs. 260, 371, 318, 360, 320, 360, 420, 300. All those payment vouchers Exhibit M-47 to M-89 are considered, it is clear that workman had completed 240 days continuous service during the period 14-12-99 to 13-12-2000. Workman was not served with notice of termination, he was not paid retrenchment compensation. Evidence of workman on above point is not shattered. Evidence of workman is corroborated by documents Exhibit M-47 to M-89.

13. Learned counsel for 2nd party Shri A.K. Shashi submits that management witness denied certificate Exhibit W-10 was issued. However said document appears unusual and suspicious. It is difficult to place reliance looking to the signature on Exhibit M-10. However documents M-47 to M-89, W-8(g) shows that workman was working with 2nd party from 12-12-99 to 13-12-00. He worked more than 240 days. The services of workman were discontinued without notice, retrenchment compensation was not paid him.

14. Learned counsel for 2nd party Shri A.K. Shashi relies on ratio held in Case of Surendra Nagar District Panchayat *versus* Dahyabhai Amarsingh reported in 2005(8) SCC-750. Their Lordship held workman claiming to have been in employment for 10 years with employer, courts below drawing adverse inference against it and reinstating workman. The courts below have wrongly drawn the said adverse inference. The scope of enquiry before Labour Court was confined to only 12 months preceding the date of termination to decide question of continuation of service.

In present case, the documents Exhibit W-8(g), M-14 to M-89 shows workman was continuously working more than 240 days during 12-12-99 till his termination on 13-12-2000. Ratio cannot be beneficially applied to present case as evidence of workman is corroborated by above documents.

Reliance is also placed in case of UP State Warehousing Corporation and Another *versus* Presiding Officer reported in 2013-III-LLJ-213 also cannot be beneficially applied to case at hand.

15. The workman was terminated without notice, retrenchment compensation was not paid to him, termination of workman is illegal for violation of Section 25-F of ID Act, therefore I record my finding in Point No. 1 in Negative.

16. Point No.2- In view of my finding in Point No.1- termination of workman is illegal for violation of Section 25-F of ID Act, question remains for decision whether workman is entitled for reinstatement with backwages. Workman in his cross-examination says he was orally interviewed after he submitted application, written test was not conducted. He alone was interviewed by Shri Awadh kumar. He not submitted any documents along with his application. Written appointment letter was not issued to him. It is clear that workman was not appointed following recruitment process. Payment voucher Exhibit W-8(g), M-47 to 89 shows payment to workman at the rate of daily wages. As workman was not appointed following recruitment process, he was engaged on daily wages, learned counsel for 2nd party Shri A.K. Shashi submits that he cannot be reinstated in service with back wages. In support of his argument, Shri A.K. Shashi relies on ratio held in :

Case of State of UP versus Hind Majdoor Sabha reported in 2011-LAB.I.C.4322. Their Lordship of Allahabad High Court considering daily wager workman working for short period of four years. His initial recruitment was not in accordance with procedure prescribed by law. Services terminated without complying with Section 6 N of ID Act. Relief of reinstatement with backwages is not proper. Workman instead may be granted compensation equivalent to six months wages.

Next reliance is placed on ratio held in case of Indian Drugs and Pharmaceuticals Ltd. Versus their workmen reported in 2007(1)SCC 408. Their Lordship dealing with Article 16, 14 and 309 of the constitution and creation of post appointment to posts, regularization, fixing of pay scales, continuation in service, their Lordship held all said functions are executive or legislative and it is highly improper for judges to step into their sphere, except in a rare and exceptional case. The court cannot create a post where none exists nor issue directions to absorb or regularize temporary employees nor continue them in service.

In present case, workman is challenged termination of his service for violation of Section 25-F of ID Act. Violation of Section 25-F of ID Act is not decided in above cited case. Claim of workman is not for regularization. In Para 15 & 18, their Lordship held no direction can be given that a daily wage employee should be paid salary of a regular employee. If an employee is not appointed against a sanctioned post, he is not entitled to any scale of pay.

Question of violation of section 25-F was not involved for consideration. Workman has not claimed regularization therefore ratio held in the case cannot be beneficially applied to case at hand.

Reliance is also placed in case of Senior Superintendent Telegraph Traffic Bhopal versus Santosh Kumar Seal and other reported in 2010(6)SCC 773. Their Lordship Dealing with reinstatement, Backwages in case of retrenchment in violation of Section 25-F of ID Act, the relief by way of reinstatement with backwages not automatic even if termination of employee is found to be illegal or in contravention of the prescribed procedure and monetary compensation in cases of such nature may be appropriate. On fact as the workman were engaged as daily wager about 25 years back, they hardly worked for 2-3 years, the relief of reinstatement with backwages cannot be said justified. The employer were directed to pay Rs. 40,000 each as compensation.

In present case, workman was in employment of 2nd party from 1998 as disclosed from affidavit of evidence of management's witness his service were terminated on 13-12-2000. Workman was engaged on daily wages without following recruitment process. In my considered view, compensation Rs. 1,50,000 would be appropriate. Accordingly I record my finding in point No.2 :

17. In the result, award is passed as under:—

- (1) The action of the Regional Manager, Bank of Baroda, Raipur and Branch Manager, Bank of Baroda Maharajpur Branch, Distt. Chhattarpur in terminating the services of Shri Mohanlal Patel w.e.f. 13-12-2000 is not proper.
- (2) 2nd party is directed to pay compensation Rs. 1,50,000 within 30 days from the date of notification.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9% interest per annum from the date of award till its realization.

R.B. PATLE, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2005.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडिया बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण/श्रम न्यायालय, पटना के पंचाट (संदर्भ सं. 08/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.10.2015 को प्राप्त हुआ था।

[सं० एल-12012/50/2009-आईआर (बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2005—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. Case No. 08 (C) of 2009) of the Indus. Tribunal-cum-Labour Court, Patna as shown in the Annexure, in the industrial dispute between the management of Indian Bank and their workmen, received by the Central Government on 15.10.2015.

[No. L-12012/50/2009-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, PATNA

Reference Case No. 08(C) of 2009

Between The Dy. General Manager, Indian Bank, Circle Office, Govind Bhawan, New Dak Bunglow Road, Patna (BIHAR)-800001 and Their workman Shri Jitendra Kumar Sinha, represented by the General Secretary, Indian Bank Employees Association (Bihar Jharkhand), C/o Indian Bank, Patna (BIHAR)-800013.

For the management: Sri Arun Kumar, Chief Manager,
Zonal Office, Patna.

For the workman: Sri B. Prasad, General Secretary, of
Indian Bank Employees Association.

Present:- Bipin Dutta Pathak
Presiding Officer, Industrial Tribunal, Patna.

AWARD

Patna, the 31st August, 2015

By notification order No. L-12012/50/2009-IR(B-II) New Delhi, dated 30.09.2009 Govt. of India 'Bharat Sarkar' Ministry of Labour/Shram Mantralaya, New Delhi referred under clause (d) of sub-section (1) and sub-section (2A) of section-10 of the Industrial Dispute Act, 1947 (hereinafter to be referred to as 'the Act') the following dispute between The Dy. General Manager, Indian Bank, Circle Office, Govind Bhawan, New Dak Bunglow Road, Patna (BIHAR)-800001 and Their workman Shri Jitendra Kumar Sinha, represented by the General Secretary, Indian Bank Employees Association (Bihar Jharkhand), C/o Indian Bank, Patna (BIHAR)-800013 for adjudication to the Industrial Tribunal, Patna.

SCHEDULE

"Whether the action of the management of Indian Bank in imposing punishment of compulsory retirement from service on Shri Jitendra Kumar Sinha is legal and justified? What relief the workman concerned is entitled to?"

2. Notification received for adjudication the dispute between the management of Indian Bank and their workman namely Shri Jitendra Kumar Sinha the dispute for adjudication is "Whether the action of the management of Indian Bank in imposing punishment of compulsory retirement from services on Shri Jitendra Kumar Sinha is legal and justified? What relief the workman concerned is entitled to?"

3. Statement of claim filed on behalf of the workman is that reference speaks of the imposition of punishment of compulsory retirement of Shri Jitendra Kumar Sinha by the management of Indian Bank. In case the punishment is held to be illegal and unjustified, the quantum of relief(s) to which the workman is entitled to, is to be decided and determined by the tribunal. Jitendra Kumar Sinha after being selected joined the service of Indian Bank w.e.f. 03.12.1994 as clerk-cum-shroff and was posted at Sihuli branch Dist. Aurangabad. Thereafter, he was transferred from Sihuli branch at Gaya branch in Sept. 1997. At Gaya branch he took active part in organizing of the workmen at Gaya and other near-by branches and was elected as Secretary of Indian Bank Employees Association (B.E.F.I), Gaya unit. In the capacity of branch Secretary. He used to raise voice against arbitrary action of the management and became an eyesore of the management. Some officers of the bank hatched a conspiracy against him and persuaded the higher management to victimize him so that trade union activities

can be curbed. Some officers of the branch due to enmity raised certain objections at certain occasion, and made an unfounded report regarding alteration of some figure in a saving bank account No. 8685 of Surya Narayan Prasad on 29.09.2000. There was no complain from the sides of the account holder but higher management placed him under suspension w.e.f. 04.02.2001. After suspension workman was issued a charge sheet. He submitted point wise reply to the charges but management was not satisfied and decided to hold domestic enquiry against the workman. Sri Surya Narayan Prasad the account holder submitted a letter before the management stating there in that the workman was not at all responsible for any alteration in his saving bank account. It did not deter the management from holding domestic enquiry and they were in full preparation for sacking the workman, so that trade union activities could be stopped once for all. Head office of the union was at Patna city branch of the bank where at most all the workmen were members of sponsoring union. The higher management always tried their level best to curb the growing organized strength other workmen. Mr. M.A. Khan, Manager, of Patna city branch who had tussle with the members of union, was appointed as enquiry officer and Rajan Lal was appointed as presenting officer.

The enquiry officer did not hold the enquiry fairly and properly and acted at the behest of the presenting officer, Enquiry officer used to seek instruction even for recording the minutes. The view pointed of defence were not recorded properly and workman was forced to write of the Disciplinary authority for changing the enquiry officer but this did not materialize. Enquiry officer ignored the principle of natural justice. His finding were one sided, and completely ignored the materials facts on record and submissions of the defence representative. Even the view points and submissions of the account holder were never given any credence. Actually, the case was related to the account holder who had no complaint at any point of time.

Enquiry officer failed to discharge his duties. Accordingly findings suffered from perversity. Without application of proper mind, the disciplinary authority passed the final order on 31.10.2006 imposing the punishment of "Compulsory Retirement" from the service of the bank. Disciplinary authority was under external pressure of C.V.O of Indian Bank. During period of suspension, workman was not paid his due wages and 4/5 annual increments were also not allowed to him.

Workman preferred an appeal against the order of the disciplinary authority on 29.11.2006. The appellate authority did not allow his defence representative at the time of personal hearing on 11.02.2008. Workman was alone during the course of personal hearing and was left with no alternative but to sign on the dotted lines of the proceedings of personal hearing. Copy of the proceeding of personal hearing was not supplied to the workman. The

entire proceeding was a cover-up exercise to victimize the workman. Workman raised an Industrial Dispute through the sponsoring union with the appropriate authority under the I.D. Act, 1947. There was non conciliatory attitude of the management and conciliation ended in failure. Failure report was sent to the appropriate Govt. and Govt. referred to this adjudication to this tribunal. Workman is a poor workman having no any alternative means of livelihood. He could not be married as he was suspended. Punishment of compulsory retirement is neither legal nor justified. Management violated the rules of evidence while proving the charges. There was no complaint in the case. Disciplinary authority failed to apply his mind properly and independently. The punishment imposed on the workman is highly punitive in nature. The workman is innocent and did not commit any misconduct. Prayer has been made for relief of reinstatement in the service of the bank with back wages and all consequential benefits and payment of cost for contesting the dispute by the workman.

4. Reply/counter statement has been filed on behalf of the respondent (management bank) on 23.12.2009. Allegation made in the claim statement has been denied, except those which has been specifically admitted and the petitioner is put to strict proof there of. It has been stated that bank is nationalised bank and the custodian of public money. Honesty & integrity are the basic tenets. Any deviation would bring down the image of the bank affecting the customer service and banking business, which is prejudicial to the interest of the public and respondent bank. The clerical staff members working in the respondent bank are governed by the settlement dated-10.04.2002 and 27.05.2002 between the management Bank/IBA and the unions representing workmen on the disciplinary proceedings & procedure there of for workmen. All averments made in para- 1,2 and 3 “about the reference and joining service of Jitendra Kumar Sinha has been statement of facts or record. All the allegations made in remaining paragraph and under the head grounds have been denied.

Brief facts relating to dispute has been stated that.

- (a) Sri Surya Narayan Prasad, Account Holder of saving bank account no.8685 at Gaya branch presented a cheque for payment and he had no sufficient balance and as such he verified is ledger and orally complained to Sri R.L. Ram and branch manager that he had not issued the cheque bearing no. 878101 for Rs. 95,000/where as it was issued for payment of Rs. 5000/ only.
- (b) Sri Surya Narayan Prasad utilized the service of his nephew Sri Jitendra Kumar Sinha who was staff, posted at Gaya branch for his bank transaction.
- (c) Branch Manager asked to submit a written complaint, but Jitendra Kumar Sinha persuaded

him not to file a written complaint and he deposited Rs. 25,000 so that his uncle (Sri Surya Narayan Prasad) could get payment of Rs. 5000.

- (d) The Branch Manager submitted a written information to the AGM Patna for necessary action *vide* his letter dated-18.12.2000.
- (e) Management Bank directed Mr. J. Baidya, Senior Manager to investigate the matter and submit the report which was submitted on 29.12.2000.
- (f) Bank called for an explanation from Mr. Jitendra Kumar Sinha *vide* letter dt-04.01.2001 which was replied dt 25.01.2001 denying the explanation called for against him without giving cogent reasons.
- (g) Mr. J.K. Sinha was suspended by the bank *vide* letter dated-31.01.2001.

Management bank did not find satisfactory explanation and decided to issue a charge sheet to hold a departmental enquiry into the charges *vide* letter dated-28.02.2001. Charge sheet was issued under clause-19.5(j) of the Bi-partite Settlement.

Charge were as follows:—(i) On 29.09.2000 he had altered the cheque No. 878101 dated 29.09.2000 for Rs. 5,000 to Rs. 95,000/- and debited the same to S.B. Account No. 8685 of Sri Surya Narayan Prasad and credit te proceeds to his own OD Account. On 07.11.2000 he had altered the previous ledger balance of Rs. 2200 as Rs. 22,200 and debited a cheque No. 878104 dt-07.11.2000 for Rs. 20,000 fvg. Mr. Brijesh Kumar to the S.B. Account No.-8685 of Sri Surya Narayan Prasad and the cheque was paid in cash.

Since the reply dated 25.01.2001 submitted by the ex-employee in response to explanation letter was not found satisfactory, a regular departmental enquiry was ordered against him by appointing an enquiry officer. The delinquent employee activity participated in the departmental enquiry with a defence representative of his choice. In the departmental enquiry he was given adequate opportunity to represent his side. The enquiry proceedings held on various dates. The presenting officer produced five witnesses (MW-1 to M.W-5) on the management side and marked fifteen documents (M. Ext. 1 to 8). The defence representative produced one witness who also deposed as management side witness. The presenting officer summed up of the proceedings on 23.03.2002 and defence representative submitted his version on 10.05.2002. After careful analysis of all the evidence and the documents submitted, the enquiry officer gave his findings on 10.08.2002 holding that the charges levelled against the delinquent proved.

Finding of enquiry officer was that in regard to charge no: (i) Sri Satya Narayan Prasad admitted in his deposition dated 28.08.2001 that the hand writing in the altered (added) works and figure were different. The

petitioner (delinquent) admitted in his deposition that he noticed the alteration while debiting the cheque but did not bring the fact to the notice of the concerned passing official. It is undisputed fact that the alteration in cheque No. 878101 dated-29.09.2000 was not authenticated by the drawer's signature and that the nature of transaction was transfer from one account to another account and not cash. The petitioner was only the benefiting person on account of fraudulent transaction. He himself debited the cheque and had taken the credit to his overdraft account. He was aware that alteration required authentication, he did not bring the fact to the notice of the passing official. The management witnesses confirmed that the alteration in the cheque No.-878101 was in the hand writing of the petitioner. Which was not disputed by defence.

As regard charge No.2 on 07.11.2000 there was no exigency at the SB counter of the petitioner to come out right from cash counter to debit one cheque No.898104 for Rs. 20,000. This clearly shows that the come out by the cash counter to debit this cheque by making actual balance of Rs. 22,000 by adding '2' before the balance figure. It was certainly with an intention to suppress the earlier act of fraud dated-29.09.2000.

The petitioner submitted his reply on the findings of the enquiry officer on 28.11.2002. He was invited by the disciplinary authority *vide* letter dated 02.05.2006 for a personal hearing to be held on 12.05.2006. The petitioner failed to avail the opportunity and instead through his union approached the ALC for conciliation. He filled a petition before ALC on 02.05.2006 apprehending the punishment of dismissal from service though punishment was neither decided nor awarded till such time. After hearing the parties on 12.06.2006 ALC adjourned the hearing to 19.07.2006 with the following comments that the delinquent employee may avail the opportunity of personal hearing provided by the disciplinary authority and the Bank will not inflict any punishment without informing the ALC also recorded the views expressed by the delinquent employee "representative that the union is agreeable for any other punishment except the punishment of dismissal. On 11.06.2006 conciliation was closed by the ALC advising the management to dispose off the case based on the merit. Advising the management to give the petitioner one more opportunity for personal hearing before awarding the punishment. Personal hearing was given on 19.09.2006.

After careful perusal of the enquiry proceedings, evidence adduced by both sides, the documents on record, written brief of presenting officer, defence submissions of defence representative, findings of the enquiry officer and the comment submitted by the petitioner. The disciplinary authority awarded the punishment of "be

compulsory retirement with superannuation benefits under clause- 19.6 (c) by taking a lenient view.

As per provisions of bipartite settlement, the petitioner preferred an appeal dated 28.11.2006 before appellate authority. The appeal duly considered and appellate authority provided an opportunity of personal hearing which was done on 11.02.2008. The appellant submitted that a mistake had happened and further pleaded to reinstate him in the service of the bank. During the course of personal hearing the petitioner on his own volition admitted his involvement in the misconduct which substantiates the findings of enquiry officer and the decision of the disciplinary authority. Appeal was dismissed and punishment was confirmed.

5. The allegations made against the management in para-4,5,6, and 7 of the statement of claim of the workman have been denied. The allegation that some officers hatched a conspiracy against the workman and persuaded the higher management to victimise him are false, baseless. It is submitted that the necessary action was initiated once the fraud came to the knowledge of the management. The account holder had orally complained to the branch manager and on an investigation, the prima-facie evidence of guilt was found and as such workman was placed under suspension and a departmental enquiry was ordered after investigation. This workman had not only altered the cheque but also tampered/alterd the Bank ledger which are serious misconducts. Charge sheet was issued in accordance to the provision of bipartite settlement and enquiry was ordered since his reply was not satisfactory. Departmental enquiry was held according to the bipartite settlement, the principle of natural justice. Enquiry officer found the petitioner guilty of the charge. Thereafter disciplinary authority after giving a reasonable opportunity imposed punishment of compulsory retirement and bank's decision imposing punishment was based on the findings of departmental enquiry in which the charge were proved. The letter of Sri Prasad was an after thought to save his nephew. Other allegations has been denied. There was no unrest at Patnacity Branch during tenure of Mr. M.A. Khan as Branch Manager. The workman had never complained against Mr. M.A. Khan and Sri Ranjan Lal for their appointment as a enquiry officer and presenting officer respectively. During enquiry workman accepted that enquiry was held in proper and fair manner. The disciplinary authority passed a speaking order giving cogent reason. It is false to say that disciplinary authority did not apply with mind while passing the order. Workman received all his genuine dues from subsistence allowance to terminal benefits. The workman never represented to the appellate

authority regarding the appearance of defence representative during the personal hearing. It is false to allege that petitioner was made to sign on the dotted lines of the proceedings and that entire proceeding was cover up exercise to victimize the workman. The misconduct by him is so serious that it deserves punishment of dismissal from service. However a lenient view was taken by awarding compulsory retirement from service with benefits, meaning thereby he would be entitled to all the retirement benefits. In case of dismissal he would not have been allowed such benefits. The bank functions, among other factors, on the faith and confidence reposed on its employee at all levels and employees of the bank are expected to show utmost integrity, honesty and loyalty to the bank and to the customers. The action of the management in awarding the punishment of compulsory retirement is fully justified and in accordance with rules and regulation of the bank. There is no question of any unfair labour practice. Enquiry was fair just and proper and in accordance with the principle of natural justice.

6. Rejoinder on behalf of the workman to the written statement of the management has been filed stating therein that submissions of the management under para-4 are not correct.

Surya Narain Prasad, account holder of S.B. account No.-8685 never lodged either verbal or written complaint with any official of the bank. Account holder maintained S.B. account with Indian Bank, Gaya branch and the workman being a bank employee discharged his duties properly. It has been stated that statement made by the management in para-(5) of written statement is not correct.

The workman was not aware of the facts of sending the complaint to the higher authorities of the bank. Management issued a charge sheet based on unfounded facts and misreporting of facts as the management wanted to curb the trade union activities of other workman also. Disciplinary authority acted with closed mind and biased approach and decided to hold domestic enquiry ignoring the submissions of the workman. The enquiry officer was in collusion with the presenting officer and did not record some of the points of the defence representative on many occasions. The submissions of the defence representative to call the account holder for his examination so that truth might have come before the Ld enquiry officer was not properly recorded and taken care of. The workman was a clerk and discharged his clerical duties only. The supervising official meticulously used to check the clerical work and the action of the workman were approved and

authenticated by the officer of the department. Workman never indulged in any fraudulent act, nor was there any complaint of fraudulent transaction. Without verifying the facts the management suo-moto came to the illogical conclusion of a fraudulent transaction and punished the workman to satisfy the ego of some powerful person. Management had already made up their mind to dismiss the workman. The personal hearing was only a cover-up exercise and the management had already decided to dismiss the workman in gross-misuse of power and authority. Disciplinary authority completely ignored the rules and evidence and material facts on record and imposed the punishment of compulsory retirement. Workman preferred an appeal. The appellate authority also acted with closed mind and biased approach and did not interfere with the order of punishment passed by the disciplinary authority. Both the disciplinary as well as appellate authority failed to discharge their duties as quasi-judicial authorities. Account holder Sri Surya Nath Prasad had never made oral complaint before the management. The account holder had come before the enquiry officer during the enquiry for his deposition for telling the truth but he was not allowed to depose. The workman was not allowed to be represented by a defence representative while being heard in person by the appellate authority. During the personal bearing the version of the workman was not recorded. On the other hand he was asked to put his signature on the proceedings register in which some officer recorded some facts at his own and the workman was goaded to put his signature. The workman worked with diligence and with utmost honesty and sincerity with the bank. The enquiry officer conducted the enquiry unfairly, improperly ignoring the principles of natural justice. His findings suffer from perversity of the findings.

7. It appears from the record that on 03.07.2012 details order was passed that there was violation of principle of natural justice in conducting a domestic enquiry and domestic enquiry not been conducted fairly and properly. In this order in para-4 it has been stated that the documents and oral evidence adduced by the management related to the fairness of domestic enquiry as well as merit of the charges. Evidence adduced by the workman also is on the question of fairness of domestic enquiry as well as touches the merit of the case. It also made clear at this stage this tribunal is concerned only with the question fairness of domestic enquiry. Therefore, the evidence on the point of the fairness of domestic enquiry will be discussed. The evidence of both sides merit of the case will not be discussed at this stage.

8. Management had examined one witness namely MW-1 (M.A. Khan) Branch Manager, Indian Bank after passing the order on the point of fairness of domestic enquiry. Earlier before passing the order on domestic enquiry four witnesses were examined who were M.W-1 Bhua Hansda, M.W-2 Jagbandhu Baidya, M.W-3 M.A. Khan, and M.W-4 Sri Ram Lakhan Ram.

9. Documents exhibited on behalf of the management are:—

Ext.:—M/1 to M/1-4	Photo copy of report dt. 18.12.2000 along with annexure.
Ext.:—M/2-	Photo copy of Account opening from of Surya Narayan Pd.
Ext.:—M/3-	Photo copy of card of Surya Narayan Prasad.
Ext.:—M/4-	Photo copy of Ledger of Sri Jitendra Kumar Sinha.
Ext.:—M/5-	Photo copy of application of Surya Narayan Prasad.
Ext.:—M/6-	Photo copy of (Explanation) letter dt. 04-01.2001.
Ext.:—M/7-	Explanation submitted by Sri Jitendra Kumar Sinha.
Ext.:—M/8-	Suspension letter dt. 31.01.2001.
Ext.:—M/9-	Photo copy of charge-sheet.
Ext.:—M/10-	Photo copy of order issued by Asst. G.M.
Ext.:—M/11-	Photo copy of letter dt. 28.02.2011 issued by the Asst. G.M.
Ext.:—M/12-	Photo copy of notice issued by Asst. G.M.
Ext.:—M/13-	Enquiry Report (Enquiry proceeding).
Ext.:—M/14-	Finding dt. 17.08.2002.
Ext.:—M/15-	Photo copy of letter dated 31.10.2002.
Ext.:—M/16-	Photo copy of letter dt. 02.05.2006.
Ext.:—M/17-	Photo copy of charge sheet dt. 28.02.2001.
Ext.:—M/18-	Photo copy of letter dt. 11.09.2006.
Ext.:—M/19-1	Photo copy of letter dt. 31.10.2006.
Ext.:—M/19-2	Photo copy of letter dt. 28.02.2001.
Ext.:—M/20-	Photo copy of appeal dt. 28.11.2006.

Ext.:—M/21-	Photo copy of order dt. 16.02.2008.
Ext.:—M/22-	Photo copy of letter dt. 29.12.2000.
Ext.:—M/23-	Grauity receipt dt. 16.08.2008.
Ext.:—M/24-	Photo Stat of PF receipt dt. 22.07.2008.
Ext.:—M/25-	Letter from J.K. Sinha dt. 18.03.2008.
Ext.:—M/26-	Statement of A/C J.K. Sinha from 02.08.2008 to 31.01.2011.

10. Witness examined on behalf of the workman W.W-1 Ranjan Kumar, General Secretary of Indian Bank Employees, Bihar & Jharkhand and posted as clerk cashier at Patna Main branch. It appears that earlier before passing order on the question of departmental enquiry three witnesses examined on behalf of the workman namely W.W-1 Surya Narayan Prasad and in now this witness dated on 06.09.2013. W.W-2 Jitendra Kumar Sinha, delinquent workman, W.W-3 Ranjan Kumar Raj and the document exhibited on behalf of the workman is:—

Ext.:—W/1-	Photo copy of explanation letter dt. 04.01.2001.
Ext.:—W/2-	Photo copy of workman reply dt. 25.01.2001.
Ext.:—W/3-	Photo copy of charge sheet dt. 28.02.2001.
Ext.:—W/4-1-	Photo copy of order dt. 31.10.2006.
Ext.:—W/4-2-	Photo copy of charge sheet dt. 28.02.2001.
Ext.:—W/5-	Photo copy of office note dt. 19.07.2006.
Ext.:—W/6-	Photo copy of office note dt. 12.06.2006.
Ext.:—W/7-	Photo copy of office note dt. 28.08.2006.
Ext.:—W/8-	Photo copy of office note dt. 05.10.2006.
Ext.:—W/9-	Photo copy of findings dt. 17.08.2002.
Ext.:—W/10-	Photo copy of worker appeal dt. 28.11.2006.
Ext.:—W/11-	Photo copy of letter dt. 16.2.2008.
Ext.:—W/12-	Photo copy of letter dt. 04.04.2008.
Ext.:—W/13-	Photo copy of conciliation report dt. 01.05.2009.
Ext.:—W/14-	Photo copy of letter dt. 27.12.2000.
Ext.:—W/15-	Letter of infavour of Branch Manager, Indian Bank, Gaya written

by Surya Narayan Prasad dt. 27.12.2000 (Same as Ext.-W/14).

Ext.:—W/16- Photo copy of death certificate of Surya Narayan Prasad, Registration No. 10348 dt. 09.09.2013 and date of issue dt. 10.09.2013.

11. It appears from the order dt. 03.07.2012 an order was passed the point of fairness of domestic enquiry but it was also observed that some evidence adduced by the management which was in support of the charges. That evidence has not discussed in the order. It was also observed that in para-4 evidence adduced by the workman also is on the question of fairness of domestic enquiry as well as touches the merit of the case. It is also been observed that "therefore the evidence on the point of the fairness of domestic enquiry will be discussed. The evidence adduced by the both sides on the charges against the workman and the merit of the case will not be discussed at this stage." "Therefore since the evidence adduced prior passing to this order was also on the merit of the charge, so those evidence will be considered in the final adjudication of the matter. Witnesses examined after passing of the order of the fairness of domestic enquiry has been twice examined, so there evidence will be clubbed together with there respective evidence which was adduced earlier.

12. Written argument has been filed on behalf of the management of Indian Bank stating therein by notification bearing No. L-12012/50/2009 (B-II) dated-30.09.2009 the following dispute has been sent for adjudication by the Central Government:—

"Whether the action of the management of Indian Bank in imposing punishment of compulsory retirement from service on Shree Jitendra Kumar Sinha is legal and justified?

What relief the workman concerned is entitled to?"

The case of the management is that Sri Jitendra Kumar Sinha (Workman) was employed as a clerk/shooff in the Gaya branch of the Bank. As ledger keeper of S.B. Account No. 8685, he had committed certain serious lapses as a result of which on 04.01.2001 management issued a show cause notice (Ext.-M/2) alleging that on 29.09.2000 he had debited a cheque No. 878101 dt. 29.09.2000 for Rs. 95,000 which had been manifestly altered from Rs. 5000 to Rs. 95,000 without authentication by the account holder. He credited the entire amount of Rs. 95,000 to his own OD Account. It was further alleged that on 07.11.2000 he had debited a cheque No. 878104 for Rs. 20,000 favouring Brijesh Kumar in S.B. Account No. 8685 where the balance as on 23.10.2000 had been altered from Rs. 2200 original balance to Rs. 22,200 and thereby extra amount of Rs. 20,000 had been debited from the account. It was further alleged in the show cause-notice that on 13.12.2000 the workman

had himself deposited Rs. 25,000 cash in S.B. Account No.8685 to wipe off the extra debit and the same had been admitted by him to the investigating official which is recorded in the report dt. 29.12.2000 marked as (Ext.-M/22). The reply submitted by the workman on being found not satisfactory, the Management Bank thereafter on 28.02.2001 framed certain specific charges against the workman. The charge sheet dated 28.02.2001 (Exhibited-M/9) specifically contains the following charges:—

- "(i) On 29.09.2000 you had altered the cheque No. 878101 dated 29.09.2000 for Rs. 5000 to Rs. 95,000 and debited the same to S.B. A/c No. 8685 of Shree Surya Narayana Prasad and credited the proceeds to your own OD A/c."
- "(ii) On 07.11.2000 you had altered the previous ledger balance of Rs. 2200 as Rs. 22200 and debited a cheque (No. 878104 dated 07.11.2000) for Rs. 20000 favouring Brijesh Kumar to S.B. A/c No. 8685 of Shree Surya Narayan Prasad and the cheque was paid in cash."
- "(iii) In the charge sheet it was clearly stated that the above charges were serious in nature and it proved would amount to doing act prejudicial to the interest of the Bank and likely to put bank in serious loss, a gross-misconduct under clause 19.5(j) of the BPS dated 19.10.1966."
- "(iv) After service of charge sheet containing the precise charges which is one of the essential requirements of initiating disciplinary proceeding, the Management Bank in accordance with the principal of natural justice, appointed Mr. M.A.K. Khan, Manager of Patna City Branch as the Enquiry Officer to enquire into the charges. Thereafter, Domestic Enquiry was held and the workman was given full opportunity to defend himself in the enquiry. Evidence was collected from both the sides and after collecting evidence and on appraisal of the same the Enquiry Officer by his report dated 10.08.2002 (Exhibited-M/14) found the workman guilty of both the charges as contained in charge sheet dated 28-02-2001 (Exhibit-M/9)."
- "(v) As per the settled principle, the Management before proposing any punishment based on the findings of the enquiry report, gave the workman a copy of the enquiry report for his perusal and response by letter dated- 31.10.2002 (Exhibit-M/15)."
- "(vi) Since the charge were very serious in nature, therefore the Disiplinary Authority the Deputy General Manager by his order dated 02.05.2006 (Exhibited-M/17) proposed major punishment of dismissal from service without notice to be

imposed on the guilty workman. However, before imposing the punishment the Disciplinary Authority decided to give a personal hearing to the guilty workman by letter dated 02.05.2006 (Exhibit-M/16) issued by the Chief Manager of the Bank."

"(vii) The moment the workman came to know that the Disciplinary Authority had proposed dismissal from service as punishment to be given to him, the workman in order to pre-empt such an action, immediately raised a dispute before the Assistant Labour Commissioner (Central), Patna. In the conciliation proceeding before the Assistant Labour Commissioner (Central), Patna the workman as represented by General Secretary of the Union namely " Indian Bank Employees Association, Bihar". In the conciliation proceeding (Exhibited-W/5) it was agreed by the parties that the workman shall meet/accept any disciplinary action except capital punishment *i.e.* dismissal from service. It is due to this reason that although the workman deserved dismissal from service the Management instead of dismissing the workman from service granted him lesser punishment by order dated 31.10.2006 (Exhibited-M/19/2) by which the workman was compulsorily retired from service of the Bank with immediate effect with superannuation benefits and without disqualification from future employment. This punishment order was communicated to the workman by covering letter dated 31.10.2006 (Exhibit-M/19/1) issued by the Chief Manager of the Bank. It is pertinent to submit that prior to imposing this punishment, the workman had once again been granted an opportunity of personal hearing by letter dated 11.09.2006 (Exhibit-M/18)."

"(viii) After the punishment of compulsory retirement from service with all superannuation benefits was imposed on the workman, the workman in accordance with the Disciplinary Rules of the Bank filed an Appeal (Exhibit-M/20) before the General Manager-cum-appellate Authority of the Management Bank. After giving sufficient opportunity of hearing the Appeal stood finally rejected by the speaking order dated 15.02.2008 (Exhibit-M/21). It is thereafter that industrial dispute was once again raised by the workman which has led to this Reference case."

From perusal of the charges mentioned referred by the management only charge no. 1,2,3 are the charges as stated by the management is to be decided herein. Alleged charges as stated by the management Bank are about the enquiry report and submissions made by the management.

Case of the workman as stated by the management is that workman have not controverted/denied the charges

levelled against him to by the Bank. It has been merely alleged that since he was an active union functionary, therefore under a conspiracy hatched by some officers of the Bank he has been proceeded with and punished of imposing compulsory retirement from service. No. complaint from the side of the account holder SB Account no. 8685 Shree Surya Narayan Prasad was made. The specific charges levelled against the workman as contained in the charge sheet dt.28.02.2001 (Exhibit-M/9) is that "on 29.09.2000 he had altered the cheque no. 878101 dt. 29.09.2000 from Rs. 5000 to Rs. 95,000 and debited the same in SB Account. No. 8685 of Shree Surya Narayan Prasad and credited the proceeds to your own OD account and on 07.11.2000 here altered the previous ledger balance of Rs. 2200 as Rs 22,200 and debited a cheque No.-878104 dated 07.11.2000 Rs. 20,000 favouring Brijesh Kumar to SB Account No. - 8685 of Shree Surya Narayan Prasad and the cheque was paid in cash.

It has been submitted that before the Assistant Labour Commissioner (Central), General Secretary of the union accepted on other punishment excepted capital punishment (dismissal), the workman stands prohibited from questioning/challenging on merit of the punishment of compulsory retirement with superannuation benefits. Inflicted on him by order contained in letter dt-31/10/2006 (Ext.-M/19/1).

The workman was found guilty of charges levelled against him. The management instead of dismissing him from service granted him less or punishment by compulsorily retiring him from service of the bank with superannuation benefit and without disqualifying him from future employment.

After having accepted all retirement benefits without protest or any objection, the workman can't question the legality and justification of the punishment of compulsory retirement given to him.

The workman is guilty of having altered the cheque No. 878101 dated 29.09.2000 for 5000/- to Rs. 95,000/- and debiting the same to S.B. Account No. 8685 belonging to Sri Surya Narayan Prasad (Uncle) and of crediting the proceeds to this own OD Account, therefore the punishment of compulsory retirement inflicted on him is both legal and justified.

It has been stated that M.W-4 Sri Ram Lakhan Ram who on 29.09.2000 was passing officer clearly deposed in his evidence before tribunal that prior to the letter 5000 Nine (9) has been mentioned and similarly prior words five thousand only words ninety has been mentioned and cheque was made for amount Rs. 95,000 only that was written by Jitendra Kumar Sinha which was identified by this witness. He informed to Sri. B. Hansda Branch Manager who proceeded further.

The workman is also guilty of altering the previous ledger balance of Rs. 2200/- as Rs. 22,200/- on 07.11.2000 and debiting a cheque (No.-878104 dated 07.11.2000) for Rs. 20,000/- favouring Brijesh Kumar to S.B. Account No. 8685 belonging to his uncle Sri Surya Narayan Prasad. The workman had therefore been rightly punished by being compulsory retired from service. In explanation workman has accepted wrongly debiting of Rs. 20,000/- from S.B.Account No. 8685. Sri Surya Narayan Prasad in evidence has stated that it is not a fact that when issued on a cheque of Rs. 20,000/- on 07.11.2000 then the balance of his amount was only Rs. 20,000/-. Had Sri Surya Narayan Prasad actually issued the 'self cheque' of Rs. 95,000/- then he would well aware that his S.B. Account would not have sufficient balance for honouring cheque of Rs. 20,000/- issued on 07.11.2000.

It has further been submitted that the bipartite settlement are entered into the various Banks (Management Bank) & recognized unions representing the employees employed in various Banks, on matter relating to disciplinary action and procedure to be followed. One such bipartite settlement was entered on 10.04.2002 in which in the list of punishment to be imposed in the event of major misconduct "Compulsory retirement from service with superannuation benefits and without disqualification from future employment" was incorporated and agreed upon between the management Banks and the recognized unions. As rightly the punishment has been given to the workman.

The written argument has been filed on behalf of the workman stating therein that terms of reference is "whether the action of the management of Indian Bank in imposing punishment of compulsory retirement from the service on Sri Jitendra Kumar Sinha is legal and justified? What relief, the workman concerned is entitled to".

It has been stated that management issued a charge sheet dated 28.02.2001 (Ex-M/9) against the workman with the following charges:-

(i) On 29.09.2000 he had altered the cheque No.- 878101 dated- 29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debited the same of S.B. Account No.-8685 of Sri Surya Narain Prasad and credit the proceeds to your own overdraft account".

(ii) On 07.11.2000 he has altered the previous ledger balance of Rs. 2200/- as Rs. 22,200/- and debited a cheque No.-878104 dated-07.11.2000 for Rs. 20,000/- favouring Mr. Brajesh Kumar to the S.B.Account No.-8685 of Sri Surya Narain Prasad and the cheque was paid in cash.

Your above acts are serious in nature and if proved will amount to doing an act prejudicial to the interest of the Bank and likely to put Bank in serious loss, gross misconduct under clause 19.5(J) of the Bipartite settlement dated-19.10.1966.

It has been stated that Bank hold a departmental enquiry under the provisions of bipartite settlement 1966 against the workman Sri Jitendra Kumar Sinha SR No.-55767, clerk/shrof Gaya branch on the charges framed against him *vide* charge sheet No.- AGM/712?VIG/988/2001 dated-28.02.2001.

After filling of claim of statement on behalf of the workman, the management submitted reply/counter statement before this tribunal. The submissions of the management were required to be supported through documentary/oral evidence.

Under para-18 of the Counter statement, the management submitted-"That since the punishment was awarded on the findings of domestic enquiry the question that the domestic enquiry was fair and proper may be decided as preliminary issue and in case the domestic enquiry is held to be invalid an opportunity should be given to the employer to prove the allegations in charge sheet dated-28.02.2001 by adducing evidence. "Management moved a petition dated-25.05.2010 before the tribunal for deciding the issue of fairness before entering into the merit of the case. Notwithstanding, the management adduced evidence on the question of fairness of enquiry and merit of the case also; The tribunal vide order dt.-03.07.2012 held the domestic enquiry to unfair and improper and gave opportunity to the management for adducing evidence in support of the charges. The management was under liberty to produce fresh witnesses/ documents other than those produced in the domestic enquiry for proving their case. The management produced a fresh list of witness and additional documents in support of the charges; Management could produce only one witness Sri M.K.Khan who was the enquiry officer of the case and conduct the enquiry has been held to be unfair and improper. He was not connected the charge sheet, as he had no occasion to work at Gaya branch. Which deposition was superfluous. The management submitted a list of five witnesses out of whom three witnesses namely (1) Sri S. Veeraraghavan, (2) Sri. v. Raghavan and (3) Sri N.M.Das were new. The management failed to produce even a single new witness in support of the charges. Management relied solely on the earlier depositions of their witnesses before the domestic enquiry which was held to be unfair.

Documentary evidence-Exts. M/1-1 & M/1-3 are cheques which were passed by Sir Ram Lakhan Ram M.W-4 Assistant Manager. Exts.-M/1-2 is the credit vouchder, released by M.W.1 The balance of the accounts were authenticated by the branch manager Sri B. Hansda M.W.-1 Ext.M-5 is the statement dated-27.12.2000 of Sri Surya Narayan Prasad account holder of S.B. No.- 8685 he submits that all the transactions relating to deposit and withdrawals were under his knowledge. He forgot to authenticate the alteration of Rs. 95,000/- in cheque no. 878101 and confirmed the alteration.

About oral evidence it has been stated that the management preferred not to produce any witness in support of the charges after the enquiry which was held unfair and improper. Management relief on the earlier deposition of their witnesses who deposed on fairness of enquiry and on charges also.

The main points of deposition has been stated as:-

(A) M.W.-1 Sri B. Hansda deposed- He reported the matter on 18.12.2000. On 27.12.2000, the account holder Sri Surya Narayan Prasad submitted his written statement with the bank (EXts. M/5). In cross-examination in para-7 M.W-1 has stated that the cheque was bearer hence it could be deposited in the account of Sri Jitendra Kumar Sinha. This cheque has been passed by Sri Rak Lakhan Ram, Officer.

Deposition of M.W-2 Sri J. Baidya in cross-examination in para-9 is-that cheque for Rs. 95,000/- had been passed by Sri Ram Lakhan Ram authenticated by Sri B. Hansda Branch Manager. He also submitted that Sri B. Hansda (M.W-1) was negligent in his work.

Deposition of Sri M.A. Khan enquiry officer M.W-3 was limited to conduct of Domestic enquiry which has been held to be unfair. As such, it requires no elucidation.

M.W.-4 Sri Ram Lakhan Ram deposed and for fraudulent case, FIR is lodged. Account holder had lodged a written complaint with the Branch Manager.

W.W-1 workman witness Sri Surya Narayan Prasad stated in para-2 that the cheque (Ext. M/1) had been issued by him which bore his signature. The cheque for a sum of Rs. 95,000/- has been handed over to his nephew Jitendra Kumar Sinha for depositing the same in his account. After seeing (Ext. M/1-3) he stated that cheque had been issued by him. He was informed of oversraft. The overdrawn amount was adjusted by him with interest. No fraudulent transaction took place in his account. He did not lodge any complaint either in writing or orally with the bank. This witness died after the domestic enquiry. Death Certificate to that effect has been produced before the Hon'ble Tribunal, which is kept on record. As he died, there was no scope for his deposition again on the fact of the case.

W.W-2 Jitendra Kumar Sinha stated that he joined the service of the Bank in 1994 and was working at Gaya Branch since 1997 after transfer. At Gaya branch he was secretary of Indian Bank Employees Association and used to raise certain burning issue of the employees. On some occasions, there used to be arguments with the branch manager. He was punished due to trade Union activities. He received a telephone call from the bank manager for receiving the amount of PF, Gratuity etc as the same would be kept in sundry account. He never applied for settlement of terminal benefits. However on the instruction of the manager, he wrote an application and the amount was credited to his account.

W.W-3 (Sri Ranjan Kumar Raj) stated that Sri Jitendra Kumar Sinha was secretary of the union at Gaya and used to raise the issues of the workers. In para-5 he has stated that met with the Disciplinary Authority who informed that he has sent proposal for stoppage of two increments but he was being pressurized by CVO for sending proposal for terminating of service.

He has submitted that on the facts emanating, the charge sheet dt. 28.02.2001 (Ext.M/9) has no any foundation and it is not based on any material fact. There is neither any complaint in writing nor orally by the account holder Sri Surya Narayan Prasad. After domestic enquiry was held to be unfair and improper, the management was afforded an opportunity to prove the charges. Management further moved a petition dt. 25.05.2010 before the tribunal for deciding the issue of fairness of the domestic enquiry. Management submitted a new list of witness but failed to produce a single witness for supporting the allegations as contained in the charge sheet. Account holder Sri Surya Narayan Prasad submitted in enquiry that no fraud took place in his account. He had neither lodged any written or oral complaint with the Bank. The workman was the Secretary of the Indian Bank Employees Association Gaya in that capacity used to raise the grievances of the workers before the local management for which the local management had developed grudge against the workman. The charge sheet was as per the provisions of the Bipartite Settlement of 1966, but the punishment was imposed as per the provisions of Bipartite Settlement of 2002. Which is neither legal nor justified. Burden of proof lies on the prosecution and not on the defence. The management failed to discharge the burden and failed to prove the charge through witnesses. The workman is innocent. Prayer has been made for set-aside order of compulsory retirement passed by the Ld Disciplinary Authority and confirmed by the appellate authority. Reinstatement of the workman in the service of the bank with all consequential benefits. Sum of Rs. 20,000/- as cost to be paid by the management to the workman has been claimed.

13. Some decision has been filed which will be discussed later on.

One of the decision is reported in 1975 AIR 1900 1976 SCR (1) 361 Cooper Engineering Ltd Vs Shri P.P. Mundhe in which it has been held that if domestic enquiry was found as violative of principles of natural justice, there was any duty cast upon that court to give an opportunity to the employer to adduce evidence afresh before it. In this case further it has been held that:-

"If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during pendency of the proceeding to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded

therein and decide the matter. If the Tribunal decodes that the domestic enquiry has not been held properly, it is not its function to invite suo moto the employer to adduce evidence before it to justify the action taken by it."

Further it has been held that "Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal, in order to satisfy itself about the legality and validity of the order, has to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action."

It has been further held on that "The tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.

Further it has been held that it has been recognised that the tribunal should straight way, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that so domestic enquiry has been held or the said enquiry is found to be defective.".....

Further it has been held on that "An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employees and to enable the tribunal itself to be satisfied about the alleged misconduct."

Next decision is reported to 2014-I-LLJ-555) 555 in which it has been also held that fresh evidence needs to be adduced, once domestic enquiry held to be bad in law.

In the decision reported in 2014-I-LLJ-557 Kant) (P&H) has been held Labour Court has rightly given specific back wages, and set-aside order of termination. Labour Court has also ordered reinstatement with specific back wages.

Next decision is the case of Jaipur Zila Sahakari Bhoomi Vikas Vs. Ram Gopal Sharma and others this is web copy of judgement. In which it has been held that if the tribunal does not approve of the action taken employer, the result will be that the action taken by him would fall and there upon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer.

14. On 03.07.2012 order was passed on the question of fairness of departmental enquiry. It has been stated that "It may be noted here that the management while adducing evidence before this tribunal adduced evidence on the question of fairness of domestic enquiry as well as on the

merit of the charges levelled against the workman....." Evidence adduced by the workman also is on the question of fairness of domestic enquiry as well as touches the merit of the case. It is made clear here that at this stage. Tribunal is concerned only with the question of fairness of domestic enquiry. Therefore, the evidence on the point of fairness of the domestic enquiry will be discussed. The evidence adduced by both sides on the charges against the workman and the merit of the case will not be discussed at this stage. However, in conclusive paragraph-14 and thereafter it has been stated that. It may be noted that earlier evidence has been adduced by the management which is support of the charges. That evidence has not been discussed in this order. Therefore, it is made clear that evidence adduced by the management in support of the charge before this tribunal earlier will be taken into consideration at the time of final discussion of the case." But by mistake management has examined those witnesses who were already earlier examined and could not be pointed. So evidence of those witnesses has been clubbed together and is discussed.

15. Management witness no.1 M.A. Khan has been examined and cross-examined twice before this tribunal earlier he has been examination on 25.05.2010 in which he has stated that he identify Sri Jitendra Kumar Sinha. Further he has stated that on 04.01.2001 a letter marked Ext.-M/6 was written to Sri Jitendra Kumar Sinha by the Assistant General Manager. Thorough this letter show cause has been asked from Sri Jitendra Kumar Sinha. Further he has stated that show cause was filed by Sri Jitendra Kumar Sinha in two pages duly signed by him marked as Ext.-M/7. He has further stated that on 31.01.2001 Assistant General Manager-cum-Disciplinary Authority issued suspension order to Sri Jitendra Kumar Sinha, photo stat has been marked as Ext.-M/8. By Ext.M/4 charge sheet was issued against the workman. That witness was appointed enquiry officer by Ext.-M/10 *vide* Ext.M/11 Sri Ranjan Lal was made presenting office. *Vide* Ext.M/12 departmental enquiry was initiated and enquiry proceedings is Ext.-M/13. This witness recorded the finding of the enquiry *vide* Ext.- M/ 14. Ext.-M/15 is the photo stat of the letter dated 31.10.2002. Further he has stated that administrative action also taken against Ram Lakhan Ram who had passed the cheque.

Further evidence before the this tribunal is an affidavit of this witness M.A. Khan in which he has stated about the exhibits in which he has stated that *vide* Ext.M-9 charge sheet was issued against Sri Jitendra Kumar Sinha. 1st charge was interpolation of letters and word ninety before the letter 5000/- was made Rs. 95,000/- in Ext.M/1/1. Which was cheque no.-878101 in respect of S.B. A/c no.-8685 and amount was debited from S.B. A/c no. -8685 and was credited in O.D. A/c of the workman. This cheque was self cheque, which bears signature by account holder Sri Surya Narayan Prasad who was uncle of Sri Jitendra Kumar Sinha. Cheque was passed and thereafter Sri Jitendra Kumar Sinha interpolation made. He amount from 5000/- to 95,000/- and

credited the amount in his O.D. account (Ext.M/4). In self cheque account holder himself and his authorised person may take cash payment. This can not be deposited by slip in other account as done by Mr. Sinha. Which is irregularity. On that date he was working on S.B. A/c counter.

Second charge was on 07.11.2000 a cheque No.-878104 was issued infavour of the Brajesh Kumar by account Sri Surya Narayan Prasad of the amount Rs. 20,000/- which was dated-07.11.2000 marked as Exts.-M-1/3. Only Rs. 2200 was in the account of account holder. On that date Jitendra Kumar Sinha was on duty of cash counter and he went to S.B. A/c counter and he made ledger balance amount from Rs. 2200/- to Rs. 22,200/- and made payment of Rs. 20000/. Going to another counter and to work there and interpolation of the bank book is also irregularity and misconduct. One day account holder Sri Prasad made oral complain that he had not withdraw Rs. 95,000/- but he had withdraw only 5000/- then matter was investigated and domestic enquiry was conducted and punishment was awarded to Jitendra Kumar Sinha.

To save the nephew Sri Prasad had issued a letter (Exts.-M/5) and he had also appeared as a witness in domestic enquiry and by comparison of his evidence it appears that Sri Prasad has given false evidence and false application to save his nephew.

Both working done by Mr. Jitendra Kumar Sinha is against the rule of the bank and was gross-misconduct he has done against the interest of the Bank. He was given lesser punishment and punishment was compulsory retirement with retirement benefits. In cross-examination he has stated that in the year-2000 he was not posted at Gaya branch but he was posted at Patnacity branch of the bank. He has not concerned with the document which is exhibited by him but he has knowledge about the documents because he was enquiry officer. He had not seen Sri Jitendra Kumar Sinha adding word 9 before word 5000/- on cheque no.-878101 dt-29.09.2000 and making it amount Rs. 95,000/. Cheque was passed by Assistant Branch Manager Sri Ram Lakhan Ram. Before passing the cheque, is examined and writing in word and letter is verified whether it is correct or not. When the cheque remained "in order only then it is passed." He has no knowledge that cheque was passed by signature of two officer. That cheque was not account payee. Amount was debited from amount of account holder cheque was self. Before credit the amount in account of Sri Jitendra Kumar Sinha pay-in-slip was filed up by the Sri Jitendra Jumar Sinha. This witness has no knowledge whether account holder had himself arrived in the bank or not on the date of occurrence. No complain of account holder was produced during enquiry. During enquiry account holder appeared as a witness but he has not given any letter that there is irregularity in his account. He has knowledge about the letter given by Sri Surya Narayan Prasad but that was not given to him during

enquiry that has been marked as Ext.-W/1 on behalf of the workman.

The cheque for which there is allegation that by adding word two (2) before 2200/- Rs. 22,200/- was made this witness does not remember who had passed change and that was not passed by Mr. Jitendra Kumar Sinha.

16. Next witness examined on behalf of the management is Bhua Hansda who is retired Branch Manager from Indian Bank Jamshedpur branch. He has stated in examination-in-chief that at the time occurrence he was posted as branch manager at Gaya in Indian Bank Branch. Occurance is of September, 2000. He identified Mr. Jitendra Kumar Sinha who was then posted at clerk-cum-cashier. At the time of occurrence he was working as ledger clerk and his work was to maintain cash, credit and debit in ledger.

He had also tampered some cheques. He detected the tampering and sent report to AGM. Patna. This witness identified photo stat of report which has been marked as Ext.-M/1. He has also inclosed photo stat was the concerned cheque, challan in related ledger. Documents are attached with the letter marked as Exts.-M/1-1, M/1-2, M/1-3 and M/1-4. In account opening application of Sri Surya Narayan Prasad, there is specimen signature card in photo stat which has been marked as exts.-M/2 & M/3. On 13th December, 2000 Sri Surya Narayan Prasad, account hold arrived with cheque of Rs. 5,000/- for withdrawal. Account clerk told him that there is no amount in his account because by different cheque amount had done withdrawn by him. Details of withdrawal has been stated to him. The he (Surya Narayan Prasad) told that amount of Rs. 95,000/- have not been withdrawn by him. He checked his ledger then found interpolation in ledger in the entry dated-23.10.2000 letter 2 was written before amount Rs. 2200/- and payment of Rs. 20,000/- was made, while at that time only the Rs. 2200/- was in the account.

On the complain of Sri Surya Narayan Prasad when relevant document were checked then it was learnt that amount of Rs. 95,000/- was credited the account of Sri Jintendra Kumar Sinha. Ledger of Jitendra Kumar Sinha was check and it was found that amount of Rs. 95,000/- of the account of Sri Surya Narayan Prasad was credited in the account of Sri Jitendra Kumar Sinha. Then ledger was called for and credit of Rs. 95,000/- was found. Concern ledger has been marked as Ext.-M/4.

On 27.12.2000 Sri Surya Narayan Prasad uncle of Sri Jitendra Kumar Sinha had given a written application photo stat of which has been marked as Ext.M/5. Thereafter high level enquiry happened and entire allegation was found true. In cross-examination he has stated that he worked in the bank for 33 years on the post from clerk to officer. Customer submits their cheque at cash counter and for cash payment token is issued. Thereafter amount is debited

and cheque is sent before debiting officer for passing the cheque. After passing the cheque, passing officer send it to counter for payment. Cheque of Rs. 95,000/- was bearer cheque. Since that cheque was bearer so it was credited in the account of Sri Jitendra Kumar Sinha. That cheque was passed by Officer, Ram Lakhan Ram. There was initial of Ram Lakhan Ram on the balance amount of Surya Narayan Prasad in S.B. account.

Further in cross-examination he has stated that first occurrence was fraud dated-29.09.2000 and on that date he was present in the bank for whole day. In reply to the question that "Whether he had seen committing fraud, this witness replied that he is branch manager he detected after fraud was committed. He has not himself seen committed fraud."

Further he has stated that account holder had not made any complain of committing fraud. Later on account holder in writing has submitted that no fraud or irregularity was committed in his account and his account is correct. Voluntarily this witness stated that when account holder arrived for withdrawal of the amount then orally made complain that amount Rs. 95,000/- which has been withdrawn, was not withdrawn of him.

This witness denied that his report of fraud is false and concocted and his statement is false.

17. Next witness examined on behalf of the management is Jagbandhu Baidya is also retired officer from Kolkata office of Indian Bank. He has stated in evidence that he was posted as senior manager during the period from 2000 from 2006 in circle office Patna. He investigated in the Gaya Branch after receiving information about the occurrence at the direction of senior office. On the direction of telephone message of AGM, Senior manager (Administration) Sri Arun Kumar directed me to investigate. After investigation his submitted the report marked as Exts. M-2/1, Ext. M/2/2. In investigation he found that in the cheque amounting Rs. 5000/- was made of Rs. 95,000/- and there was different in letter and word due to interpolation and Rs. 95,000/- was credited on the account of bank staff namely Sri Jitendra Kumar Sinha. This occurrence is dated-29.09.2000.

Second occurrence is dated 07.11.2000 from the same account Rs. 20,000/- of the cheque was debited after alteration in ledger. Balance amount in the ledger was Rs. 2200/- and in the left side letter '2' was written and amount was made Rs. 22,200/- and cash amount was paid.

He submitted the report. Bank started domestic enquiry. He was examined as a witness in the departmental enquiry.

In cross-examination he has stated that he does not remember the date on which he had gone for investigation. After seeing the document, he may tell about the date. He stayed at Gaya for one day for investigation. During investigation he has taken statement of Sri Jitendra Kumar

Sinha. He had also taken the evidence of Sri Ram Lakhan Ram, officer and branch manager Bhua Hansda. He had not recorded the statement of those person and he had not obtained their signature.

He denied that he had not taken in statement of Sri Jitendra Kumar Sinha and he had not given any statement. He denied that he had not stayed at Gaya for a investigation and on the second day account holder namely Sri Surya Narayan Prasad has met with him and he orally stated and also given in writing that no fraud has been committed in his account.

This witness does not know that on the basis of his report charge sheet was prepared. He further stated that cheque of Rs. 95,000/- was passed by officer Ram Lakhan Ram. The account in which that amount was credited was authenticated by branch manager. At that time Sri Bhua Hansda was branch manager.

He denied that Ram Lakhan Ram and Bhua Hansda was irresponsible in his office. No show cause notice was issued to them. He has also not written in his report that Bhua Hansda was irresponsible in his work. He denied that he did not investigate properly and freely and submitted wrong report and his statement is not out of will.

18. Management witness-4 Sri Ram Lakhan Ram, Assistant Branch Manager, Southern Avenue, Branch, Kolkata. This witness in his evidence stated that in the year 2000 he was posted as Assistant Manager at Gaya branch of Indian bank and he was working as passing officer. This witness identified Ext.-M/1-1 and has stated that this cheque was produced by Mr. Jitendra Kumar Sinha who was clerk in Gaya branch of India Bank and he had stated that in place of making cash payment the amount was credited in his bank account which was O.D. account. After inspecting the cheque he has stated him (Jitendra Kumar Sinha) bank staff to prepare credit challan. He arrived with credit challan and he passed the cheque of Rs. 5000/-. After some days account holder Sri Surya Narayan Prasad arrived who had dropped the cheque in bank for withdrawal of the amount. When he submitted the cheque. The ledger clerk, who was on duty on that date, replied that there is no amount in his account. Sri Surya Narayan Prasad replied that there must be amount in his account. Ledger clerk stated him about withdrawal of the amount as per ledger and informed about latest entry. Ledger clerk also informed about withdrawal of Rs. 95,000/- and account holder stated that he never withdrew Rs. 95,000/-. Ledger clerk informed this facts to this witness. The voucher of the date on which Rs. 95,000/- was withdrawn was taken out and it was found that the amount Rs. 5000/- of the cheque Exts. M/1-1 has been made of Rs. 95,000/-. Letter Rs. 5000/- was written and before letters five letter '9' was added and similarly "word five thousand" only was made Rs. Ninety five and by adding word Ninty that was writing was in the pen of Jitendra Kumar Sinha. This witness informed this facts to Sri Bhua

Hansdha, Branch Manager, and cheque was shown to him. Thereafter he took further action.

He further stated that he was examined as witness in domestic enquiry.

After seeing Exts. M/1-3 this witness stated that this cheque of Sri Surya Narayan Prasad was produced for payment to Rs. 20,000/-. On that date only Rs. 2200/- was in the account of Sri Satya Narayan Prasad. Sri Jitendra Kumar Sinha interpolated letter '2' in the ledger before the amount Rs. 2200/- and balance was made Rs. 22,200/-. That cheque was passed by this witness. Later on at the time of balancing the ledger this fact was detected. After detecting the wrong, the amount was credited in the account then that deficit was adjusted. This witness had informed to branch manager in orally and in writing when wrong was detected.

For both the occurrence charge sheet was also issued against this witness and domestic enquiry was held and his increment was stopped and he was sensored.

In cross-examination this witness has stated that at the time of occurrence he was officer in senior management grade. He had power in transfer up to the Rs. 1,50,000/- and in cash he had power up to Rs. One Lakh. At the time of passing the cheque and at the time of release of voucher he inspects all the things and if everything is in order, then cheque is passed and voucher is released. In evening cheque and ledgers last entry was checked. Transfer scroll was not used to be maintained. In bank cash scroll was maintained. Never transfer scroll was maintain.

He had released credit voucher amount of Sri Jitendra Kumar Sinha, credit voucher of Rs. 5000/- which has been marked as Exts. M/1-2 and after seeing the Ext. he has stated that this was released by him. Assistant branch manager in evening has authenticated credit debit of O.D account of Jitendra Kumar Sinha. Disputed cheque was dropped by Satya Narayan Prasad.

He had not seen himself Jitendra Kumar Sinha interpolating letter "9" in the cheque. He had also not seen himself Jitendra Kumar Sinha interpolating letter "2" before the amount of Rs. 2200/- in ledger.

This witness further stated that he has no knowledge that in the bank any case of fraud direction of C.V.C. is followed. He has knowledge that in the case of fraud FIR is used to be lodged. This witness has no knowledge that in bank against Jitendra Kumar Sinha and FIR was lodged or not. Account holder has given written complain to branch manager but what was the complain is not known to this witness. He may file copy of written complain on next date.

This witness has further no knowledge that account holder has filed complain in the bank for compensation of his loss or not. Further this witness has no knowledge that bank sustained loss of how much amount to compensate the amount holder.

This witness has stated that he may file copy of the charge sheet which was given to him. He has not read the charge sheet of Sri Jitendra Kumar Sinha. Further he has stated that he has arrived to depose in the matter of Jitendra Kumar Sinha.

This witness has denied that his evidence is not voluntarily but tutored evidence. This witness has denied that account holder had not made complain and no amount was given to compensate to account holder and entire case is based on misreporting and no fraud was committed.

He has also denied that since Jitendra Kumar Sinha was respected union leader, the bank has implicated him in false case. He has also denied that since bank had punished him so to take revenge he has given false statement.

19. Document exhibited on behalf of the management are Exts.-M/1 to M/26.

Exts.-M/1 the letter dated-18.12.2000 sent to Assistant General Manager, Indian Bank, vigilance department by branch manager, Indian Bank, Gaya. In the subject matter of fraud committed by Jitendra Kumar Sinha clk/SH Sr. No.-5576724 of Gaya branch. In S.B. account No. 8685 of Surya Narayan Prasad. It was informed that Mr. Jitendra Kumar Sinha has committed a fraud S.B. Account No.-8685, Surya Narayan Prasad maintained with out branch in following ways.

(1) On 29.09.2000 he (Jitendra Kumar Sinha) debited a cheque No.-878101 dt-29.09.2000 for Rs. 95,000/- to the above said SB account and credited the proceeds to his own O.D account. In the said cheque he has altered the cheque amount from Rs. 5000/- to 95,000/-.

(2) On 23.10.2000 in the same S.B. account he altered the balance from Rs. 2200/- to Rs. 22,200/- and allowed a debit of cheque No.-878104 dt-07.11.2000 for Rs. 20,000/- thereafter the account have come in debit balance.

(3) On 13.12.2000 he had deposited cash of Rs. 25,000/- to clear the over draft in the S.B. account/For reference cheque No.-878101 dt.-29.09.2000 and cheque No.-878104 dt-09.11.2000. Credit challan dt-29.09.2000 of O.D. account of Jitendra Kumar Sinha. S.B. ledger sheet No.-448271 of S.B. account 8685 has been enclosed.

Exts.-M/1-1 is the cheque dt-29.09.2000 of Rs. 95,000/- issued by Surya Narayan Prasad.

Ext.:M/1-2 is the deposit slip in the name of Jitendra Kumar Sinha is O.D. account of the amount Rs. 95,000/-.

Ext.:—M/1-3 is the cheque dt-27.01.2000 of Rs. 20,000/- issued by Sri Surya Narayan Prasad is name of Brajesh Kumar.

Ext.:—M/1-4 is the extract of ledger of S.B. account of account no. 8685 of Surya Narayan Prasad. From which is appears that Rs. 95,000/- was debited from account of Surya

Narayan Prasad also amount debit of Rs. 20,000/- from account of Surya Narayan Prasad on 29.06.2000 respectively.

Ext.:—M/2 is account opening form of Sri Surya Narayan Prasad.

Ext.:—M/3 it also photo stat of card of specimen signature of Surya Narayan Prasad.

Ext.:—M/4 is the photo stat of the ledger of Jitendra Kumar Sinha from which it appears that on 29.09.2000 Rs. 95,000/- was credited in the account of Sri Jitendra Kumar Sinha.

Ext.:—M/5 is the letter given to branch manager, Indian Bank, Gaya by account holder to Surya Narayan Prasad in subject matter of S.B. Account No. 8685. In the letter it has been stated that Jitendra Kumar Sinha is his nephew and on his identification account was opened and withdrawal was within knowledge of this account holder and he confirms all transactions. He left to confirm the alteration in his cheque no. 878101 of the amount Rs. 95,000/- and i.e. correct. He had also confirmed other withdrawal by inform and through cheque and he has no objection.

Ext.:—M/6 is the letter dt-04.01.2001 sent by Asst. General Manager to Sri Jitendra Kumar Sinha stating there that:—

- (1) "On 29.09.2000 you had debited a cheque No. 878101 dt- 29.09.2000 Rs. 95,000/- which had been materially altered from Rs. 5000/- to Rs. 95,000/- without authentication by the account holder and the proceed had been credited to your O.D. account. The customer had not mentioned whether he had altered the same or not."
- (2) "On 07.11.2000, you had debited a cheque No. 878104 dt-07.11.2000 for Rs. 20,000/- fvg. Brajesh Kumar in the S.B. Account No. 8685 where the balance as on 23.10.2000 had been altered from Rs. 2200/- original balance to Rs. 22,200/- and there by an extra amount of Rs. 20,000/- has been debited from the amount."
- (3) "On 13.12.2000, you had deposited Rs. 25,000/- in cash to wipe off the extra debit and the same had been admitted by you to the investigating official."

Ext.:—M/7:—(1) Explanation letter submitted by Sri Jitendra Kumar Sinha stating therein that Sri Surya Narayan Prasad is his uncle and S.B. Account No. 8685 had been opened with my introduction. On 29.09.2000, account holder has given me a cheque bearing no. 878101 dt-29.09.2000 for a sum of Rs. 95,000/- and not Rs. 5000/-. The simple things was that the addition of word ninety required authentication by the drawer which was unintentionally

left by him as he was in hurriedness and going somewhere else out of Gaya. The account holder being the close relative of mine had given me the cheque to adjust my O.D. account as he did not require that money that time. However, alter a few days I gave him the money.

(2) On 07.11.2000 again a cheque was presented for a sum of Rs. Twenty thousand only being number no. 878104 dt-07.11.2000 favouring Brajesh Kumar is S.B. account no. 8685. Before Rs. 2200/- balance as of 23.10.2000 there was equal mark and due to this deceptively by the balance seemed to be Rs. 22,200/- instead of Rs. 2200/-. Accordingly the cheque for Rs. 20,000/- was debited.

After a few days on 13.12.2000 the account holder himself informed about the excess withdrawal and accordingly I suggested him to deposit the amount so excessively withdraw. Thereafter on the same date 13.12.2000 sent a sum of Rs. 25,000/- in cash and the same was deposited by me forthwith.

He submitted that Sri Surya Narayan Prasad account holder is uncle and accordingly he gave me Rs. 95,000/- which was returned to him. He has been discharging his duty to the best of my sincerely and ability and did not commit any irregular act to the detriment to the institution.

Ext.:—M/8- is the letter dt-31.01.2001 sent to Sri Jitendra Kumar Sinha by Assistant General Manager/Disciplinary Authority in which it has been stated that he had committed certain serious irregularities in Gaya Branch. Which was no:—

- (1) On 29.09.2000 you had altered the cheque no. 878101 dated 29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debited the same to the SB A/c No. 8685 of Sri Surya Narayan Prasad and credit the proceeds to your own O.D. account.
- (2) On 07.11.2000 you had altered the previous ledger balance of Rs. 2200/- as Rs. 22,200/- and debited a cheque (No. 878104 dated 07.11.200) for Rs. 20,000/- fvg. Brajesh Kumar to the SB A/c No. 8685 of Shri Surya Narayan Prasad and the cheque was paid in cash.

It is also informed that above act are serious nature and if proved will amounting to doing on act prejudicial to the interest of the Bank and likely to put Bank in serious loss, a gross-misconduct under clause 19.5(J) of the Bipartite Settlement dated 19.10.1966. Pending enquiry or initiation of such enquiry into aforesaid conduct enquiry he was suspended from the Banks services with immediate effect.

Ext.:—M/9 is the letter sent to Jitendra Kumar Sinha by which charge framed against him was communicated.

Ext.:—M/10 is letter sent by Asst. General Manager/ Disciplinary Authority on 28.02.2001 to Sri M.A. Khan by which he was appointed as inquiring authority to conduct

an enquiry into the charges levelled against Jitendra Kumar Sinha.

Ext.:—M/11 is letter dated 28.02.2001 sent by same Asst. General Manager/Disciplinary Authority by which Sri Ranjan Lal was appointed as presenting officer in the departmental proceeding.

Ext.:—M/12 is notice letter dated 29.02.2001 Asst. General Manager/Disciplinary Authority and it has been stated that bank had decided to hold departmental enquiry under the provision of the Bipartite Settlement 1966 against Mr. Jitendra Kumar Sinha on the charges framed against him and M.A. Khan was enquiry officer and empower him to hold the enquiry.

Ext.:—M/13 is the proceeding of preliminary enquiry conducted by Mr. M.A. Khan, enquiry officer.

In the enquiry proceeding it appears that after the enquiry conducted on 07.07.2001 bank has not submitted before this tribunal a minutes of the proceeding in proper manner because proceeding of the 04.08.2001 has not found at proper place.

It appears that in the enquiry evidence on Surya Narayan Prasad was recorded on 28.08.2001 who has stated that he had gone at Gaya branch for opening S.B. A/c No. 8685 and Sri Jitendra Kumar Sinha had identified him. Jitendra Kumar Sinha in nephew. Question was also asked from this witness that in case of excess withdrawal he will be deemed to be in criminal or conspiracy. He has also stated that in pass book there was balance of Rs. 22,000/- and he had issued a cheque of Rs. 20,000/- on 07.11.2000. He has identified the cheque issued by him of Rs. 95,000/-. He has also admitted that in the cheque word and letter was added by him in his writing. But he had no authenticated the added letter and word. He had given the amount to Jitendra Kumar Sinha because he was in need. He had given cash amount to Jitendra Kumar Sinha his residence. After withdrawal about Rs. 5000/- was the balance amount. But he had seen the pass book in which Rs. 22,200/- was in balance. So issued a cheque of Rs. 20,000/-. When he felt that balance was less than he desisted Rs. 25,000/- in the account.

Ext.:—M/14 is the findings of the enquiry authority in the departmental enquiry conducted against Mr. Jitendra Kumar Sinha. In which it has been stated that the defence based on the letter from Sri Surya Narayan Prasad to the Branch Manager, Gaya.

Ext.:—M/15 is the letter dated 31.10.2002 sent to Sri Jitendra Kumar Sinha by Asst. General Manager/Disciplinary Authority in which findings dated 10.08.2002 of the enquiring authority was sent. The enquiring authority in his findings held all the charges period.

Ext.:—M/16 is letter dt-02.05.2008 sent to Mr. Jitendra Kumar Sinha by the Chief Manager in which it has been

stated that " on careful examination of charge-sheet, findings of I.A. dated 17.08.2002 exhibits and other relevant papers and documents, Deputy General Manager/Disciplinary authority is convinced that the charges, framed against you *vide* afore-mentioned charge sheet are genuine and proved and in consequence of the same, he has issued a speaking order dated 02.05.2006 proposing a major punishment, being dismissal from the service of the Bank without notice, to be imposed on you as set out in clause no. 19.6(a) of Bipartite Settlement dated 19.10.1966. Copy of the said speaking order is enclosed herewith for your perusal.

However, disciplinary authority has decided to give you a personal hearing at 3.00 P.M. on 12.05.2006 in his regard to the nature of the proposed punishment. In case, you fail to avail the personal hearing to be given by disciplinary authority on the said date, it will be construed that you have nothing to say in regard to the nature of proposed punishment and the matter will be proceeded with further.

Ext.:—M/17 is the order dated 2nd May, 2006 by Deputy General Manager/Disciplinary Authority in which it has been stated that "The irregularities committed on the part of CSE as mentioned above, are very serious in nature and prejudicial to the interest of the Bank and construed as gross misconduct under clause no. 19.5(J) of Bipartite Settlement dated 19.10.66. Therefore, I propose the major penalty, being dismissal from service of the Bank without notice as set out in clause no. 19.6(a) of Bipartite Settlement dated 19.10.66 to be imposed of SCE, Shri Jitendra Kumar Sinha. The period of suspension will be treated as one on suspension only.

However, in terms of provision under clause no. 19.12(a) of Bipartite Settlement dated 19.10.66. I shall give a personal hearing to the CSE at 3.00 P.M. on 12.05.2005 in my office and the same will be given as to the nature of the nature of the proposed punishment only. In case, CSE fails to avail the opportunity of personal hearing on the said date, it will be construed that he has nothing to say in regard to the nature of the proposal punishment and the matter will be proceeded with further.

Ext.:—M/18 is the letter dated 11.09.2006 by Dy. General Manager and circle Head of Sri Jitendra Kumar Sinha in which again offer was given to him, a personal hearing in the regard to the nature of proposed punishment to be imposed on him.

Ext.:—M/19-1 is letter dated 31.10.2006 sent by Chief Manager to Sri Jitendra Kumar Sinha in which he was communicated that he was compulsorily retired from the service of the Bank with effect from the date of speaking order with superannuation benefits i.e. pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulation prevailing at the relevant time and without disqualification from further employment.

Ext.:—M/19-2 is the order of Dy. General Manager & Circle Head/Disiplinary Authority in which same order has been communicated.

Ext.:—M/20 is the memo of appeal preferred by Sri Jitendra Kumar Sinha before Appellate Authority (General Manager).

Ext.:—M/21 is order dated 16.02.2008 communicated to Sri Jitendra Kumar Sinha by the Chief Manager (H.R.M.). The subject matter of order of General Manager/Appellate Authority in the matter of punishment imposed on Jitendra Kumar Sinha by the Depty General Manager/Circle Head/Disiplinary Authority, Patna *vide* his order dated 31.10.66.

Order dated 15.02.2008 passed by General Manager/Appellate Authority has been enclosed and General Manager/Appellate Authority in the appeal preferred by the Jitendra Kumar Sinha SR No.55767 Ex-clerk/shoff Gaya Branch has passed order that he found no reason to interfere in the decision of Disiplinary Authority as there was no merit in the appeal. Hence, the appeal of Mr. Jitendra Kumar Sinha was dismissed and disposed off as such.

Ext.:—M/22 is the letter dated 29.12.2000 sent to Asst. General Manager, Indian Bank, Regional Office, Patna by Senior Manager, Regional Office, Patna in the subject matter of alleged fraudulent transaction in the S.B. Account No.8685, Surya Narayan Prasad at Gaya Branch. In which it has been stated that senior manager had visited Gaya Branch on 26.12.2000 and investigated the alleged fraudulent transaction as stated above. It has been stated about amount Rs. 95,000/- that amount in figure and words are materially altered with no authentication by the account holder. The amount of Rs. 95,000/- was transferred/credited to ID A/C No. 47 of the staff, Jitendra Kumar Sinha on the same day. No alteration was, however, noted in the credit challan of O.D. A/C, Jitendra Kumar Sinha.

(2) "It was further observed that Sri Jitendra Kumar Sinha had debited on 07.11.2000, a cheque no. 878104 dt-07.11.2000 for Rs. 20,000/- fvg. Brijesh Kumar to the S.B. A/c 8685 of Surya Narayan Prasad when the previous balance (as on 23.10.2000) in the account was Rs. 2200/- only and the balance was materially altered as Rs. 22,200/- . Cheque was paid cash, to the bearer.

On verbal interrogation in presence of Branch Manager, the ledger keeper, staff, Jitendra Kumar Sinha, cl/sh had amitted that he had noted the alteration in the cheque from Rs. 5000/- to Rs. 95,000/- but had forgotten to refer the matter to the passing officer/Branch Manager.

He was also informed that Sri Surya Narayan Prasad, S.B. A/c No. 8685 in his uncle. The S.B. A/c in question was also introduced by him on 18.07.2000. The customer could not be interrogated as he was out of station on the day.

(3) It was further observed that on 13.12.2000 that staff Sri Jitendra Kumar Sinha, had deposited a sum of Rs. 25,000/- by cash, himself, to clean the overdrawn S.B. Account and the same is admitted by the staff.

(4) Sri Ram Lakhan Ram (Sr. No. 14935), Asst. Manager, had passed the cheque No. 878101 dt-29.09.000 Rs. 95,000 and cheque No. 878104 dt-07.11.2000 for Rs. 20,000/- fvg. Brijesh Kumar, also had checked the S.B. Ledger (S.B. 8685) on both the days. The Asst. Manager had stated that due to pressure of routine work shortage of light in the Branch, the alteration in cheque and ledger balance in S.B. 8685 A/c. Surya Narayan Prasad, could not be noted by him.

Ext.:—M/23 is gratuity receipt of Jitedra Kumar Sinha dt-16.08.2008.

Ext.:—M/24 is the P.F. receipt of Sri Jitedra Kumar Sinha.

Ext.:—M/25 is the application of Sri Jitendra Kumar Sinha given to Branch Manager, Indian Bank, Gaya, for payment of PF and Gratuity amount.

Ext.:—M/26 is Statement of account of Sri Jitendra Kumar Sinha is Indian Bank, Gaya Branch, Gaya.

20. 16 document have been Extd. On behalf of the workman.

Ext.:—W/1 is letter dt. 04.01.2001 set by Asst. General Manager to Jitendra Kumar Sinha informing him that he as ledger keeper of S.B. Account No. 8685 in the name of Sri Surya Narayan Prasad.

(1) On 29.09.2000, you had debited a cheque No. 878101 dt-29.09.2000 for Rs. 95,000/- which had been materially altered from Rs. 5000/- to Rs. 95,000 without authentication by the A/c holder and the proceed had been credited to your OD A/c. The customer had not mentioned whether he had altered the same or not.

(2) On 07.11.2000, you had debited a cheque No. 878104 dt-07.11.2000 for Rs. 20,000/- fvg. Brijesh Kumar in the S.B. A/c No. 8685 where the balance as on 23.10.2000 had been altered from Rs. 2000/- original balance to Rs. 22,200/- and there by an extra amount of Rs. 20,000/- has been debited from the account.

(3) On 13.12.2000, you had deposited Rs. 25,000/- in cash to wipe off the extra debit and he same had been admitted by you to the investigating official.

Explanation has been asked from Shri Jitendra Kumar Sinha or above irregularities/lapse within 15 days from the date of receipt of the letter.

Ext.-W/2 is explanation dt-25.01.2010 submitted by the Mr. Jitendra Kumar Sinha to the Asst. General Manager through the manager, Gaya Banch in which it has been stated that addition of word ninety required authentication

by the drawer which was unintentionally left by him as he was in a hurry and going some-where else out of Gaya. The account holder being the close relative of mine had given me the cheque to adjusting my O.D account. Another explanation was that on 07.11.2000 again a cheque was presented for a sum of Rupees twenty thousand only bearing number 878104 dt-07.11.2000 favouring Brijesh Kumar in the S.B. A/C No. 8685. Before Rs. 2200/- balance as on 23.10.2000 there was equal mark and due to this deceptively the balance seemed to be Rs. 22200/- in stead of Rs. 2200/-. Accordingly the cheque for Rs. 20,000/- was debited.

Ext.-W/3 is the letter dt-28.02.2001 sent to Sri Jitendra Kumar Sinha by Asst. General Manager/Disciplinary Authority in which it has been stated that his reply was considered carefully and the same was not acceptable. Therefore, charges were framed against him. Details of the charges has been stated in the letter.

Ext.-W/4-1 is the letter dated-31.10.2006 sent to Shri Jitendra Kumar Sinha by Chief Manager stating therein charge sheet dt-28.02.2001 issued to him by the then Asst. General Manager & Circle Head/Disciplinary Authority. Jitendra Kumar Sinha was placed suspension *vide* order dated-31.01.2001 and a departmental enquiry was ordered on 28.02.2001 by Disciplinary Authority for examination of charges, framed against him. Shri M.A. Khan enquiry authority of the said departmental enquiry has submitted his findings (dt-17.08.2002) on 19.08.2002.

On careful examination of charge-sheet, findings of IA dated-17.08.2002, exhibits and other relevant papers and documents, Deputy General Manager/Disciplinary Authority is convinced that the charges, framed against you *vide* afore-mentioned charge-sheet are genuine and proved. In consequence of the same and after giving personal hearing to you on 19.09.2006, he has issued the speaking order dated 31st October, 2006, thereby imposing a major punishment on you as set out in clause no 19.6 (C) of Bipartite Settlement dt-19.10.66 and its subsequent amendments and as a result, you are compulsorily retired from the service of the Bank with effect from the date of speaking order with superannuation benefits *i.e.* Pension and/or Provident Fund and Gratuity as would be due otherwise under the Rules and Regulations prevailing at the relevant time and without disqualification from future employment. Copy of the said speaking order dated-31.10.2006, issued by Disciplinary Authority is enclosed herewith.

Ext.-W/4-2 order passed by the Deputy General Manager & Circle Head/Disciplinary Authority. Which is part of the letter communicated by the Chief Manager *vide* Ext. M/4-1.

Ext.-W/5, W/6, W/7, W/8, are office orders.

Ext.-W/9 is the letter dated-17.08.2002 sent by M.A. Khan Branch Manager/Enquiry Officer to Shri R. Balakrishnan

AGM/Disciplinary Authority by which finding of the departmental enquiry was sent.

Ext.-W/10 is the matter of an appeal preferred by the Mr. Jitendra Kumar Sinha appellant before the Appellate Authority (General Manager).

Ext.-W/11-photo stat letter dt-16.02.2008 sent to Shri Jitendra Kumar Sinha by Chief Manager (HRM) in the matter of punishment imposed of Shri Jitendra Kumar Sinha. This contains 15 sheets.

Ext.-W/12 is also photo stat of the letter dt-04.04.2008 presented before ALC (Central) by the Indian Bank Employees Association Bihar in 5 sheets.

Ext.-W/13 is also photo stat of conciliation report dt-01.05.2009 sent to the Secretary Government of India, Ministry of Labour, New Delhi by Asst. Labour Commissioner (C) Patna by which failure of conciliation was reported.

Ext.-W/14 is the letter given by the Shri Surya Narayan Prasad to Branch Manager, Gaya. In which it has been stated that in the cheque amounting Rs. 95,000/- he forgot authentication of the alteration done in the cheque.

Further it has been mentioned in the Exts list that Ext.-W/15 is the same as Ext.-W/14. Ext.-W/15 was in place of Ext.-W/1.

Ext.-W/16 is Public document of death certificate of Surya Narayan Prasad, Registration No.-10348 dt-09.09.2013 and date of issue is 10.09.2013. (Photo copy).

21. Three witness has been examined on behalf of the workman W.W-1 Surya Narayan Prasad, W-W-2 Jitendra Kumar Sinha & W.W-3 Rajan Kumar Raj.

W.W-1 Surya Narayan Prasad has stated that he has got saving account no.-8685 in Indian Bank, Branch at Gaya and that account exist at present. Further he has stated that cheque marked Ext M/1-1 has been issued by him and it appears his signature. Amount of cheque is Rs. 95,000/-. He has given this cheque to his nephew Jitendra Kumar Sinha for depositing in his account. Witness had seen Ext. M/1-3 stated that this cheque has also been issued by him and amount was written in cheque by him and he identified his signature. He had received the payment of this cheque.

Further this witness stated that later on bank informed that there is over draft in his account. He deposited the amount with interest of the overdraft. For any irregularity (error) in his account, he did not make any complain to any officer of the bank either written or orally. There was never irregularity in his saving account no.-8685. This is the cause that his account is still continuing. If there would have been any irregularity, then he would have closed the amount.

In cross-examination he has stated that Jitendra Kumar Sinha is his nephew. Late Prakash Lal father of Jitendra Kumar Sinha was his own brother. He had three brother No.-(1) Uma Charan Prasad, (2) Prakash Lal and this witness himself. Jitendra Kumar Sinha used to do transaction at the stance of this witness.

This witness denied that on 13.12.2000 he had gone to the bank and had given a cheque for withdrawal of Rs. 5000/-. But there was short amount in the ledger so that cheque was not passed and in this matter he had made oral complain to the branch manager and passing officer. Further this witness has stated that it is true that his nephew Jitendra Kumar Sinha has deposited Rs. 25,000/- in his account but this witness does not remember the date of deposit. He has given that amount to his nephew for depositing.

This witness further denied that branch manager had told him to make written complain but at the stance of his nephew, Jitendra Kumar Sinha he did not make written complain and Jitendra Kumar Sinha himself deposited Rs. 25,000/-.

This witness has stated that he was examined in departmental proceeding and his evidence was recorded in departmental proceeding and he had put signature on his deposition marked as Ext.-M/13.

After seeing the cheque marked as Ext M/1-1 this witness stated that this cheque of Rs. 95,000/- which was issued by him.

Letter '9' was written before amount Rs. 5000/- in the cheque by this witness and in the word 90 was written before the word '5', by this witness.

There is no initial of this witness in the word and letter of the enhanced amount.

This witness further denied that there was only amount Rs. 20,000/- in his account on 07th November, 2000 when he produced the cheque of Rs. 20,000/- in the bank.

This witness identified the cheque of Rs. 95,000/- marked as Ext.-M/1-1 and stated that this was self-cheque. This witness further had seen Ext. M/5. This witness denied that his evidence is false and it is to save his nephew.

22. Next witness on behalf of the workman W.W-2 Jitendra Kumar Sinha (delinquent workman) himself. He has stated that he joined Indian Bank in December 1994 at Sihuli Branch at the post of clerk-cum-cashier. he was posted September 1997 at Gaya Branch. When he was posted at Gaya Branch then he was on the post of Secretary of Indian Bank Employees Association of Gaya Branch. In the capacity of Secretary of the branch, daily he had discussion with the branch manager in the matter of problem of other employees. There used to be altercation during the course of discussion. Branch Manager used to take work from the staff even after 5.30 P.M and staff did not

want to stay and this points was mainly due to this reason, there was altercation.

In January 2001 he was suspended and thereafter charge sheet was given to him. In the bank there was account in the name of Shri Surya Narayan Prasad who was his own uncle. His S.B account was 1217-8685. He denied that he had made the amount of cheque No.-878101 dated-29.09.2000 from the amount Rs. 5000/- to 95,000/-, issued by his uncle.

His uncle himself had come with the cheques in the bank because he had got no time he had to go somewhere. So he told this witness to deposit the amount of the cheque in the account of this witness and later on he will take account from this witness. At that time cheque was fully in order to get deposited and this was bearer cheque. So he deposited the amount of cheque in his account.

Further this witness denied that on 07.11.2000 only Rs. 2200/- was in the S.B. account of his uncle and prior to that this witness interpolated letter '2' and made the amount Rs. 22,200/-.

This witness stated that domestic enquiry was not properly conducted by enquiry officer. Bank punished him only due to reason that he was office bearer of the union. He was punished by the bank only to suppress the activity of the union. The charges framed against him are totally false.

Further this witness prayed that he be reinstated in service with full back wages. After removal from service he has not gone in another service neither did any business of profession. He is completely unemployed.

In cross-examination this witness stated that prior to his suspension show cause was asked from him and thereafter domestic enquiry was conducted. Shri M.A. Khan was enquiry officer. He participated in domestic enquiry and Shri Ranjan Raj was his representative in enquiry. Prior to institution of domestic enquiry bank has not given him any paper or documents.

This witness denied that Shri Surya Narayan Prasad was his witness rather he was witness on behalf of the bank. Bank had called him for evidence. During enquiry Shri M.A. Khan and used to make contact through Mobile and thereafter asking he used to right and many thing written by him himself.

In further cross-examination dt 8-3-2011 he has stated that in the enquiry proceeding he himself and his representative both signed each and every page of the proceeding. He has not filed any documents to demonstrate that enquiry officer during the enquiry used to make contact through Mobile and he was not impartial.

He has not filed by documents to demonstrate that he was office bearer of the union of the branch. He has not filed any documents to demonstrate that he and others

used to be detained by the branch Manager even after banks working hour for the work and he has raised the dispute in this respect with the branch manager.

This witness identified his signature and his reply and explanation makred as Ext.-M/7. Further he has stated that after findings him guilty, when management had called him for personal hearing then prior to personal hearing he had given an application before Asst. Labour Commision of Labour department. But this witness has no knowledge that before A.L.C union representative agreed for any other punishment except removal from service because he was not present before Asst. Labour Commissioner.

Disciplinary authority called him prior to giving him punishment. He had raised objection that enquiry not fair but in spite of his protest disciplinary officer had stated that enquiry was fair and without pressure.

After his compulsory retirement he was paid Rs. 1,13,782/- which was of G.P.F amount. A part from that Rs. 26,480/- was also paid to him which was amount of gratuity. Those amount credited in his account. He denied that is employed. He also denied that after receive the total amount then raised the dispute.

On recall further examination in chief was held on 30.01.2014 in which this witness has stated that his uncle Surya Narayan Prasad Had given him cheque of Rs. 95,000/- in the bank in the chamber of branch manager. After seeing the cheque he had filled up pay in slip. After filing form of pay slip he enclosed with cheque and handed over to Ram Lakhan Ram who was passing officer and he after verifying cheque given him and he debited of the amount in the ledger. After passing the cheque amount credited in his O.D account. He further stated that his amount in O.D account was finally authenticated by Branch Manager, B. Hansda. After debiting the cheque officer Shri Ram Lakhan Ram and passed the cheque and after authentication by the Branch Manager amount was credited in his account. Till that time it was not stated there was any alteration and/ or over writing in the cheque. The amount Rs. 95,000/- was credit in his account. At the instance of uncle Surya Narayan Prasad. He had never seen nor heard Surya Narayan Prasad had made any written or oral complain. Prior to 16.12.2000 in the connection show cause was given to him by Branch Manager. He further stated that investigating officer had never met with him all allegation or charges against him were false and that was only due to activities of his union. Further he has stated that prior to his suspension, no show cause and explanation was given to him.

After termination from service he is completely unemployed. After termination of the service he had not given any application in the bank for his payment of his pension, P.F etc. Branch of the bank has intimated on phone that amount of gratuity, P.F have arrived in central office

and was told to receive the same otherwise that amount will be kept in sundry account. At the instance of Branch Manager he gave a application to deposited amount in his account. His claim is true. In cross-examination he has stated that his uncle had handed over him cheque in the cabin of branch manager. Cheque was not a "self" cheque and it was also not in the name of this witness. He has further stated that he did not see that cheque was self or not, but voluntarily he has stated that cheque was bearer cheque.

He has further stated after seeing the cheque branch manager gives it to a officer to verify that cheque is in order or not. After findings the cheque in order, it is handed over to account clerk to debit in the account. At the instruction of Ram Lakhan Ram he debited the cheque because Ram Lakhan Ram Verified the cheque, then this witness debited the cheque. Cheque was of the amount of Rs. 95,000/-. He had seen the cheque properly. After seeing the cheque it appears that word ninety was write some above the amount.

He denied that cheque was passed of the amount Rs. 5000/- and then he interpolated word "9" and made the cheque of the amount Rs. 95,000/- and amount was withdrawan. He further denied that word ninety was interpolated. He never told the bank that handwriting of the cheque being examined by handwriting expert. He further denied that he wrongly stated that his uncle Surya Narayan Prasad has told to depost of the amount of cheque in the account of this witness and later on accounting will be done. After seeing Ext.-M/5 he has stated that this has been written by his uncle Surya Narayan Prasad. He had not written that his uncle had told to deposit the amount in the account of this witness. He denied that to save this witnesses his uncle Shri Surya Narayan had written this letter Ext.-M/5. He further stated that during course of departmental enquiry his uncle was examined as a witness. He denied that during the departmental enquiry his uncle has stated that after receiving the amount arrived at residence of this witness (Jitendra Kumar Sinha) and handover the amount for his needful. This witness denied that this uncle has stated that he handed over the amount at the residence. His uncle had his signature on his statement and there are also signature of concern party, but M.A. Khan (enquiry officer) had himself written many things. During the course of departmental enquiry, for recording wrong statement he orally raised objection with M.A. Khan but he has not written complain. Ext.-M/7 is written by this witness.

This witness further stated that O.D account was open in the name of his witness to take loan from fixed deposit. He has instruction from manager and many staff had opened O.D. account.

This witness further stated that he is at present unemployed. He denied that purpose of the O.D account was to make transaction and he has to run business. At the

present he has no O.D account. He did not receive the amount of P.F and gratuity with protest. He made application for receiving payment of the amount. He denied that prior to payment, cheque was used to be produced on counter and from there it was sent to the passing authority.

23. Next witness on behalf of the workman is W.W.-3 Sri Ranjan Kumar Raj, Clerk-cum-cashier of Indian Bank, Patna main branch. By mistake this witness has again been examination on behalf of the workman on 17.01.2014, both the evidence will be considered herein. This witness stated that he is General Secretary of the Indian Bank Employees Association, (Bihar & Jharkhand Branch). This union is affiliated with Union Bank Employees Federation of India. He further stated that his union is minority union on All India basis.

He further stated that Jitendra Kumar Sinha was secretary of his union at Gaya Branch. In the year 2000 at Gaya. His union was minority union. Jitendra Kumar Sinha at that time posted at the Gaya Branch, raised problem before branch manager which were problem of electricity working after bank hour and so many problems. Branch Manager inclusion with majority union he treated him and used to threaten him. He also made contact on phone with higher authority and warning from higher officer was given to his (workman). At that time this witness raised problem of Gaya Branch in Regional Office. Jitendra Kumar Sinha was punished due his activities in union.

This witness was defence representative in departmental enquiry against Jitendra Kumar Sinha. Enquiry Officer at any stage did not fairly conduct the enquiry. Enquiry officer used to change the venue of the enquiry and enquiry was conducted some time at Gaya and some time at Patna. Enquiry was in-connection with irregularly in the account and account holder was Surya Narayan Prasad. Who had in writing submitted to the management that there was irregularity in the account. But even in inspect of the facts bank management had produced him as a witness and in enquiry presenting officer and enquiry officer had variously threatened to Surya Narayan Prasad to send him to Jail and he will be removed from service and the objection raised on behalf of delinquent was not recorded by the enquiry officer. Presenting officer did not declare Surya Narayan Prasad hostile during the examination-in-chief and asked such question which are asked in cross-examination.

This witness has made complaint twice before Assistant Labour Commissioner, (i) Before the C.V.C. and secondly after passing the order of punishment.

This witness denied that Jitendra Kumar Sinha at the end of enquiry has stated that he is satisfied with the enquiry and he has no complaint against enquiry officer. It is precedent to right such, at end of enquiry and this was written by enquiry officer and got signed by the delinquent. After completion of enquiry this witness met disciplinary

authority and in respect of proposed punishment. Disciplinary authority stated that he sending proposal for stoppage of increment and he had pressure to send proposal for removal from service. In the light of above said fact in respect of proposed punishment he made complain with Assistant Labour Commissioner.

Enquiry was conducted against Jitendra Kumar Sinha for the occurrence in the year 2000. During period of occurrence there was provision for giving financial punishment and to stop increment or there was provision for dismissal from service but for compulsory retirement there was no provision at time in respect of compulsory retirement. To take opinion of C.V.C that provision came in existence in bipartite settlement dated-10.04.2002.

Complaint was made before Assistant Labour Commissioner that dispute is only for some mistake and it is not a case of dismissal. Then management indicated that it will not consider about dismissal from service. There is no provision to implement bipartite settlement dated-10.04.2002 with retrospective effect.

This witness further stated that in the bank there are chances to committ small mistake and when some mistake comes in light, it is used to be corrected. Mistake was committed and came into light then Surya Narayan Prasad by deposited the amount but management by high lighting the mistake conducted departmental enquiry and gave highest punishment. Disciplinary authority under external pressure gave such punishment.

In cross-examination has has stated that in enquiry when he remained present put signature in the proceeding. he further stated that during the departmental enquiry he was given opportunity for cross-examination the witnesses of the management and to produce witness in defence. He made oral complaint with disciplinary authority against enquiry officer. No documents was filed in the tribunal to demonstrate that Jitendra Kumar Sinha was office bearer and member of his union because no such need was understood. No document has been filed to demonstrate that Jitendra Kumar Sinha raised problem before branch manager for workers because problem was raised at branch level and were not made in writing. No such documents has been filed in the tribunal that this witness raised problem in regional office of the Gaya branch. This witness denied that branch manager incollusion with majority union ill-treated with Jitendra Kumar Sinha and used to threatened him.

Once enquiry was conducted at Patna. Surya Narayan Prasad was witness of defence and he was not witness of management. This witness further denied that charge against Jitendra Kumar Sinha was not a minor mistake, it was big mistake. This witness further denied that disciplinary authority after hearing the workman and after application of mind punished him. He further denied that

enquiry officer had given full opportunity to both sides to produce their evidence and witness.

This witness had further examined on 17.01.2014 and in re-examination-in-chief he has stated that he was defence representative at the time of department enquiry. During departmental enquiry management produced Surya Narayan Prasad who was account holder for evidence. Sri Surya Narayan Prasad has stated after see the cheque of the amount Rs. 95,000/- that this cheque was written by him. He had also stated about the letter was given by him. Further he has stated that no one have tampered or altered the amount of cheque. Further he has stated that there is no irregularity in his Saving Bank A/c. Further he stated that prior passing the cheque that is debited by account clerk and after verifying the signature and cheque is passed by officer. Related cheque was passed by Asst. Branch Manager Ram Lakhan Ram. Further he has stated that branch manager Bhua Hansda had passed cheque for crediting in O.D. Account. Bearer cheque may be transferred in other account and related cheque of Rs. 95,000/- was bearer cheque which was transferred in another O.D account that amount was deposited by Jitendra Kumar Sinha in O.D account by filling pay-in-slip. Seldom in any account amount is debited, then account holder is informed and amount of overdraft is recovered. Further this witness stated that he remembered that after debiting in account of Surya Narayan Prasad of the amount Rs. 20,000/- there was overdraft of Rs. 18000/- and after getting information Surya Narayan Prasad deposited amount of Rs. 25000/- to clear overdraft.

This witness further stated that Jitendra Kumar Sinha was office bearer of the union in Gaya Branch. Thereafter he was secretary of the branch, in the capacity of office bearer of the union he raised problem of the workman. That problem was to work in the bank after working hour and even after completion cash was not closed. Leave was not granted to the workman etc. There was also problem of capacity electricity and generator and Jitendra Kumar Sinha used to raise the problem stated above and this witness used to discuss the matter with circle head. Being office bearer of the union, wrong charges were framed against Jitendra Kumar Sinha, he was removed from the service. The punishment given to him is not in accordance with law. In cross-examination he has stated that for payment of Rs. 95000 of the cheque amount pay-in-slip was filled up by Jitendra Kumar Sinha. Surya Narayan Prasad had deposited in his account Rs. 25000/-. After how many days from debiting Rs. 20,000/- that amount Rs. 25,000/- was deposited, is not remembered by the this witness, Jitendra Kumar Sinha was secretary of the union in Gaya Branch from the time of posting and till his suspension.

Further this witness stated that name of Surya Narayan Prasad was given as defence witness but management produced as management witness and he was cross-

examined. Any occurrence related to cheque amount Rs. 95,000/- did not happen in presence of this witness. He has stated that Jitendra Kumar Sinha was secretary of the union in the branch which has been stated by him in his evidence, and he has not given other evidence. This witness had seen the cheque of Rs. 95,000/- Rs. 90000/- was written before the amount Rs. 5000/- and there was no signature of account holder. There was no difference in both writing.

Jitendra Kumar Sinha joined at Gaya Branch in the year 1997-98 and allegation is about the occurrence of the year 2000. During the period of the year 1997 to 2000 there was no action taken by the management for any occurrence.

Cheque was passed by Ram Lakhan Ram and any overdraft ledger credit was passed by Bhua Hansda, Branch Manager and amount was released by Ram Lakhan Ram. This witness remember the evidence of Surya Narayan Prasad (S.N. Pd) and Surya Narayan Prasad had stated that the cheque belongs to him and was written by him, cheque of the amount Rs. 95000/- and he forgot to put his signature on the allercation of Rs. 90,000/- There is no irregularity in his account. Management had threaten Surya Narayan Prasad to send him Jail. Surya Narayan Prasad had stated that he has received the amount Rs. 95,000/-. Jitendra Kumar Sinha transferred in his account Rs. 95,000. This witness can't tell that allegation is only of the amount of Rs. 95,000/- or in other matter.

In another matter Rs. 20000/- was debited from the account of Surya Narayan Prasad. There was charge that cheque was of the amount of Rs. 20000/- and the amount in the account of account holder was only Rs. 2200/- and the allegation was that in the ledger amount was increased to Rs. 22,200/- and cheque was debited from the account of Surya Narayan Prasad. This witness does not remember that on 13.12.2000 the cheque was produced for payment of Rs. 5000/- This witness have no knowledge of paying overdraft of Rs. 18000/- Punishment was not implemented against Jitendra Kumar Sinha because there is no provision in service condition. Service condition is given in bipartite settlement and after giving the benefit of retirement Jitendra Kumar Sinha was retired.

FINDINGS

24. This reference has been sent to this tribunal for adjudicate "Whether the action of the management of Indian Bank in imposing punishment of compulsory retirement from service on Shri Jitendra Kumar Sinha is legal and Justified? What relief the workman concerned is entitled to?"

25. In this case witnesses were examined even before the order passed on the point of fairness of departmental enquiry but it has been stated in the order in para-4 that four witnesss examined in the case on behalf of the management and all documents and oral evidence adduced

by the management related to the fairness of domestic enquiry as well as on merit of the charges. Evidence adduced by the workman is also on the question of fairness of domestic enquiry as well as touches the merit of the case. Further in para-14 last but one para it has been stated "Therefore, it is made clear that evidence adduced by the management in support of the charge before this tribunal earlier will be taken into consideration at the time of final decision of the case. The management may, if they like so, adduce further evidence in support of the charges to prove the same before this tribunal. Thereafter, the workman will also entitled to adduce evidence in his defence.

As per reply/counter statement filed on behalf of the management dt- 23.12.2009, charges were against the workman:—

- (i) On 29.09.2000 you had altered the cheque No.- 878101 dated-29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debited the same to S.B. A/c No.- 8685 of Sri Surya Narayan Prasad and credited the proceeds to your own OD account.
- (ii) On 07.11.2000 you had altered the previous ledger balance of Rs. 2200/- as Rs. 22,200/- and debited cheque (No.- 878104 dated-07.11.2000 for Rs. 20,000/- fvg Mr. Brijesh Kumar to the SB A/c No.-8685 of Sri Surya Narayan Prasad and the cheque was paid in cash."

It has been stated in the written statement that since the reply dated-25.01.2001 submitted by the ex-employee in response to the explanation letter was found to be not satisfactory, a regular departmental enquiry was ordered against him by appointing an enquiry officer. The delinquent employee actively participated in the departmental enquiry with a defence representative of the choice. In the departmental enquiry, the petitioner has given adequate opportunity to represent his side and the principles of natural justice were adhere to. The enquiry proceedings held on various dates. The presenting officer produced five witnesses on behalf of the management sides and marked fifteen documents. The defence representative produced one witness who also deposed as management sides witness.

The presenting officer summed up of the proceeding on 23.03.2002 and on this the defence representative submitted his version on 10.05.2002. After careful analysis of all the evidence and documents submitted therein, the enquiry officer gave his findings on 10.08.2002 holding that the charges levelled against the petitioner stood proved.

The petitioner submitted his reply on the findings of the enquiry on 28.11.2002. The petitioner was also invited by the disciplinary authority vide letter dated -02.05.2006 for a personal hearing to be held on 12.05.2006. The petitioner failed to avail the opportunity and instead,

through his union approached the ALC for conciliation . He filed a petition before ALC on 02.05.2006 apprehending the punishment of dismissal from service through punishment was neither decided nor awarded till such time. Finally, after hearing the parties on 12.06.2006 the ALC adjourned the hearing to 19.07.2006 with the following comments that the delinquent employee any avail the opportunity of personal hearing provided by the disciplinary authority and that the Bank will not inflict any punishment without informing the ALC. The ALC also recorded the views expressed by the delinquent employee's representative that the union is agreeable for any other punishment except the punishment of dismissal. On 11.10.06 the conciliation was closed by the ALC advising the management to dispose off the case base on the merits taking reasonable decision and advising the management to give the petitioner one more opportunity for personal hearing before awarding the punishment. Accordingly a personal hearing was given to the delinquent employee on 19.09.2006.

After careful persual of the enquiry proceedings, evidence adduced by both sides, the documents on record, written brief of presenting officer, defence submission of defence representative, finding of the enquiry officer and the comments submitted by the petitioner and his submission made through personal hearing, the disciplinary authority awarded the punishment of "be compulsory retired with superannuation benefits" under clause 19.6(C) by taking a lenient view.

26. The statement of claim has been filed on behalf of the workman.

27 The rejoinder on behalf of the workman to the written statement of the management has been filed on 29.01.2010. In which it has been stated that Sri S.N. Prasad account holder S.B. A/c No.- 8685 never lodged either verbal or written complain with any official of the bank. Account holder had maintained a S.B. A/c with Indian Bank Gaya Branch and the workman being as bank employee discharged his duties properly. Workman is not aware of the fact of sending the complaint to the higher authorities of the Bank.

Further it has been stated that management issued a charge sheet based on unfounded facts and misreporting of facts as the management wanted to curb the trade union activities of other workmen also. Workman was falsely charged. Disciplinary authority acted with closed mind and biased approach and decided to hold domestic enquiry ignoring the submissions of the workman. The submission of the defence representative to call the accounts holder for his examination so that truth might have come before the learned enquiry officer was not properly recorded and taken care of. The workman was a clerk and discharged his clerical duties only. The supervising officials meticulously used to check the clerical work and the actions of the

workman was approved and authenticated by the officer of the Deptt. The workman never indulged in any fraudulent act, the management had already made up their mind the dismiss the workman. Other submission also been made.

28. From the charges levelled against the workman it appears that first charge related to the matter dated-29.09.2000 for altering the cheque No.-878101 dated-29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debiting the same in S.B.A/C 8685 to Sri Surya Narayan Prasad and crediting the proceeds in his own O.D. account it means O.D account was of Sri Jitendra Kumar Sinha.

Second charges relates it appears that on 07.11.2000 for altering the previous ledger balance of Rs.2200/- to as Rs.22,200/- and debiting a cheque No.-878104 dated-07.11.2000 for Rs. 20,000/- favouring Mr. Brijesh Kumar to the S.B.A/C No-8685 of Sri Surya Narayan Prasad and the check was paid in cash.

It appears that a same S.B. A/C No.- 8685 in both the charges and account holder is Sri Surya narayan Prasad.

29. It is pertinent to note that matter has been referred to adjudicate:-"Whether the action of the management of Indian Bank imposing punishment of compulsory retirement from service on Sri Jitendra Kumar Sinha is legal and justified? What relief the workman concerned is entitled to?"

30. To adjudicate the matter it is pertinent to that after conclusion of departmental enquiry punishment was imposed on Jitendra Kumar Sinha and departmental enquiry was in the matter of charges levelled against the workman namely Jitendra Kumar Sinha the first charge was 29.09.2000 he had altered the cheque No.-878101 dated-29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debited the same to S.B. A/C No. 8685 of Sri Surya Narayan Prasad and credited the proceeds to your own O.D. account.

The second charge was-"On 07.11.2000 you had altered the previous ledger balance of Rs.2200/- as Rs. 22,200/- and debited a cheque (No.-878104 dated-07.11.2000) for Rs. 20,000/- fvg. Mr Brijesh Kumar to the S.B.A/C No.-8685 of Sri Surya Narayan Prasad and the cheque was paid in cash.

31. The evidence and documents will be considered in the matter of charge No. (1). It is pertinent to note that account holder was Sri Surya Narayan Prasad and he has been examined as W.W-1 in this tribunal. He has stated that he had S.B. A/C No.-8685 Indian Bank, Gaya Branch that account in still continuing. Further he has stated that in respect the charge No.-(1) in cheque M/1-1 was issued by him. He had identified his signature on the cheque. Further he has stated tha this cheque was of the amount of Rs. 95,000/-. He has also stated that he has given the cheque to his nephew Sri Jitendra Kumar Sinha to deposit in his own account. Evidence of this witness in respect of charge

two will be delt later on.

This witness stated in para-5 that in respect of irregularity in his account. He has not made complaint to any officer of the bank either oral or in writing. There was no irregularity in his A/C No.-8685 and this is reason that the account is continuing. If there would have been in irregularity, he had closed the account.

In cross-examination this witness stated that Sri Jitendra Kumar Sinha his nephew. Late Prakash Lal father of Mr. Jitendra Kumar Sinha was his full brother. Jitendra Kumar Sinha had done transaction in the account as per direction of this witness. This witness denied that on 13.12.2000 he had gone to the bank and submitted a cheque of Rs. 5000/- but there was less amount in the ledger and as such cheque was not passed, then he had made oral complaint in this respect before branch manager and passing officer. He had denied that branch manager had told him to make complain but his nephew Jitendra Kumar Sinha restrained him from making written complaint and himself deposited of Rs. 25,000/- in the account.

This witness further stated that he appeared as a witness in departmental enquiry and put his signature over his deposition marked Exts. M/13. This witness after seeing the cheque marked as Ext. M/1-1 has stated that this is cheque of the amount of Rs. 95,000/- which was given by him. Further he has stated that he had written worked ninety before word five himself and written 5 before the digit 5000/-. He further stated that in this word and letter he had not put any initial. Further he has stated that cheque of the amount of Rs. 95000/- was self cheque. He had seen Exts.-M/5 and stated that this was given by him to branch manager. As such it appears that this witness is the main witness because he is account holder.

32. Next witness (W.W-2) is Jitendra Kumar Sinha (delinquent workman) himself. He had stated that he had joined Indian bank in the year-1994 in Sihuli branch on the post of clerk-cum-cashier. He was posted at Gaya branch in Sept. 1997. At Gaya branch he was Secretary of the Indian Bank Employees Association of Gaya Branch. In the capacity of secretary he had talk with the branch manager in respect of problem of other workman and there used to happen altercation during discussion. Bank manager used to take work even after 5.30 P.M and workman did not want to stay. This was main cause for dispute.

In January 2001 he was suspended and thereafter charge sheet was given to him. One of the account holder of bank was own uncle of Sri Surya Narayan Prasad whose account was S.B. A/C No.- 8685. He denied that he had altered the amount form Rs. 5000/- to Rs. 95,000/- on 29.09.2000 of the cheque No.-878101 issued by his uncle. His uncle had himself arrived in the bank with cheque. His uncle had no time because he has to go some where. So he told me to deposit the amount in the account of this witness. Cheque

was in order and was fit to be deposited and was bearer cheque as such deposited the amount of the cheque in this own account.

Domestic enquiry was not properly conducted. He was punished by the bank because he was office bearer of the union and he was punished to curv the activity of the union. All the charges against him are false. He requested to full salary and reinstatement in the service. He did not joined any service after removal from the service. He was not engaged other profession.

In cross-examination this witness has stated that prior to suspension show cause was asked for him. M.A.Khan was enquiry officer and Sri Ranjan Roy was defence representative. Prior beginning of domestic enquiry, bank has not delievered any documents. Sri Surya Narayan Prasad was witness of the bank and bank had called him as a witness. During enquiry M.A. Khan used to consult through mobile and then he used to write about enquiry. In the enquiry proceeding he himself and his representative both signed each and every page of the proceeding. He had not filed any document to establish that enquiry officer used to talk through mobile during enquiry. He was permanent office bearer of the union. There is no any such document to show that even after working hour, work was taken from him. He identified Ex.-M/7 show cause and explanation. After finding guilty management had called him for personal hearing but prior to personal hearing he had filed petition beforee ALC. He does know that before Assistant Labour Commissioner representative the union had agreed for any punishment accept removal from service.

Disciplinary authority had called him before punishment. He had filed petition that enquiry was fair. He has further stated that Ext.-M/1-1 cheque was debited by him, this was bearer cheque and there was cutting. After compulsory retirement he was paid Rs. 1,13,782/- which was amount of G.P.F. Apart from that amount of gratuity was paid.

On recall in further examination-in-chief he has stated that his uncle Sri Surya Narayan Prasad had given him cheque of Rs. 95,000/- in the chamber of manager and seeing the cheque he had filled up pay-in-slip which was attached with the cheque and handed over to Sri Ram Lakhan Ram, he was passing officer. Who after verifying returned him cheque then it was debited in ledger. After passing the cheque amount was credited in his O.D. amount. Amount of O.D. account was finally authenticated by branch manager namely Bhua Hansdha. After debiting the cheque he went to Ram Lakhan and branch manager after authentication credited the amount in his account. Till that time he was not told about any altercation/or over writing in the cheque. The amount Rs. 95,000/- was credited in his account at the instance of his uncle Surya Narayan Prasad. He had never seen nor heard that Surya Narayan Prasad had made in oral or written complain. Prior to 16.12.2000, no

show cause was sent to him. Even investigating officer did not meet with him. All charges against him was wrong. Prior to suspension no show cause/explanation was asked from him.

In cross-examination he has stated that his uncle has hand over cheque to him. In the cabin of Branch Manager and cheque was not self nor in his name. That was bearer cheque.

Accordingly to his knowledge manager verifiees the cheque and then gives to an officer, whether cheque was in order or not. It cheque is found in order then it is given counter clerk for debiting in account. He debited the amount on the direction of Ram Lakhan Ram because Ram Lakhan Ram verified the cheque. It appears from cheque that word ninty was written over writing of the cheque.

He denied that cheque was passed of the amount Rs. 5000/- and he added word '9' before the digit 5000/- and made the cheque of Rs. 95000/-. He never asked the bank to get examined the cheque from hand writing expert. In Ext.-M/5 Surya Narayan Prasad had not written to credit the amount in the account of this witness. He denied that Surya Narayan Prasad had given amount at the residence. Enquiry officer M.A. Khan volunrily had written many things in the evidence. He is unemployed at present.

Next witness is W.W-3 Ranjan Kumar Raj. He is clerk-cum-cashier in Indian Bank, Patna main branch. He has stated that he is General Secretary of Indian Bank Employees Association Bihar, Jharkhand branch. He has stated that his union is related with, Union Bank Employees Federation of India. His union is minority union at all Indian level. Further he has stated that Jitendra Kumar Sinha was secretary of his union at Gaya Branch. Jitendra Kumar Sinha used to raise problem at Gaya Branch like electricity working after bank working hour etc before branch manager. Branch manager in collusion with majority union used to oppress and threaten him. He also used to given warning and threating from high official. This witness raised problem of Gaya branch in the Regional office. Jitendra Kumar Sinha was punished due to his activity in the union.

This witness was defence representative in enquiry proceeding against Jitendra Kumar Sinha. Enquiry officer did not inquire the matter fairly at any stage. Enquiry officer used to change place of enquiry. Some times enquiry was held at Gaya branch and some times it was held at Patna. Enquriy was in respect of that account number of which account holder was Sri Surya Narayan Prasad who had given in writing to the management that there was no irregularity in account. But management produced his as his own witness. Presenting officer and enquiry officer variously threatened to Sri Surya Narayan Prasad and threatened to send him Jail etc. Objection was raised from defence representative but that was not entered by enquiry officer. In enquiry presenting officer declared Sri Surya

Narayan Prasad as hostile and enquiry officer asked the question which was used to be asked in cross-examination.

In respect of the case of the Jitendra Kumar Sinha complaint was made before Asst. Labour Commissioner. First before proposal of CVs and secondly after passing the order of CVs. This witness denied that Jitendra Kumar Sinha at the end of enquiry submitted that he has satisfied and he has no complain from enquiry officer. This is a custom to written such thing at the end of enquiry, enquiry officer mentioned this facts in the proceeding got signature from them.

At the end of enquiry this witness has met with disciplinary authority and had talk with him about possible punishment and disciplinary authority had told that he is sending proposal to with hold increment but pressure was put on him to send proposal for removal from service and this witness has made complaint in respect of proposal punishment before ALC.

In the matter of year-2000 the enquiry conducted against Sri J.K.Sinha at that time only punishment was provided for economical or financial punishment such as to be held increment. There was provision for dismissal but there was no provision for compulsory retirement and that provision was inserted later on from 10th April, 2002 Bi-lateral settlement. Matter was raised before ALC that this was a minor mistake and it is not matter of dismissal. Management had indicate before ALC that matter of dismissal will not be considered. Settlement of 10th April, 2002 had no retrospective effect. There used to be minor mistake and such mistake comes into the light then it is corrected.

In examination-in-chief held on 17.01.2014 this witness has stated that during enquiry management witness told during his evidence by seeing cheque of Rs. 95000/- that it was written by him and there is his letter in this respect and there is no irregularity in the cheque he has also stated that there is no irregularity in account. Before passing the cheque, it is debited by counter clerk and officer after verifying signature passes the cheque. That cheque was passed by Asst. Branch Manager, Ram Lakhan Ram and branch manager Bhua Hansdha at passed the cheque for crediting in O.D. Account.

Bearer cheque may be transferred in other account. Related cheque of Rs. 95000/- was bearer cheque and it was transferred in O.D. account and pay-in-slip was filled up by Jitendra Kumar Sinha. If amount is wrongly debited then account holder is informed and amount of overdraft is recovered. This evidence is in respect of another cheque of Rs. 20,000/-.

In cross- examination this witness has stated that when he was present during enquiry he had put signature on the proceeding. During enquiry opportunity was given to cross- examined management witness and to produced evidence in defence. He has orally complained from

disciplinary authority against enquiry officer. No document has been filed in this tribunal that Jitendra Kumar Sinha was member and official of his union. Jitendra Kumar Sinha used to problem of branch level and there is no documentary proof of that because no written problem is raised at branch level. No documents has been filed before this tribunal that this witness has raised the matter before Regional office. Further he has stated that once enquiry was conducted at Patna. this witness has full knowledge of the case of Sri Jitendra Kumar Sinha. In further cross-examination on 17.01.2014 he has stated that for payment of cheque of Rs.95,000/- pay-in-slip was filed up by Jitendra Kumar Sinha. Name of Surya Narayan Prasad was given as defence witness but management had examined him as management witness. In the cheque of Rs.95,000/- 90,000/- was written over the amount Rs. 5000/- and there was no signature of account holder. There was no difference in both the writings.

Jitendra Kumar Sinha joined at Gaya branch in the year 1997-98 and said occurrence is of the year-2000. There was no complain in any matter against Jitendra Kumar Sinha during period of three year. Ram Lakhan Ram had passed the cheque and for overdraft, in ledger credit Bhua Hansdha branch manager had passed ledger credit in overdraft and release was made by Ram Lakhan Ram. Further this witness remembers that Surya Narayan Prasad stated in his evidence that cheque of Rs. 95,000/- was written by him and but forgot to put signature over the changes of Rs. 95,000/- There is no irregularity in his account and management had threatened him send to Jail. Surya Narayan Prasad has also stated that he has received the amount of Rs. 95,000/-. Jitendra Kumar Sinha had transferred the amount of Rs. 95,000/- or of some other matters.

As such in respect of the charge No.-(1) of the amount Rs. 95,000/- this is oral evidence and which is hereinafter dealt with. Charge No.(i) is that on 29.09.2000 delinquent had altered the cheque no.-878101 dated-29.09.2000 for Rs. 5000/- to Rs. 95,000/- and debited the same to S.B. Account No.-8685 of Sri Surya Narayan Prasad and credited the proceeding to his O.D Account.

Management witness M.A. Khan witness is the enquiry officer in respect of the domestic enquiry against Jitendra Kumar Sinha as appears from Ext.-M/12. This witness is not aware of the fact which happened on 29.09.2000. This is only a witness in respect of enquiry. About the fairness of enquiry earlier order has been passed.

Other witness is B. Hansdha who was branch manager of Indian Bank, Gaya branch at the relevant times of the occurrence. He has stated that Jitendra Kumar Sinha had tempered some cheque. In respect of the amount of account holder Sri S.N. Prasad and he has stated that S.N. Prasad had arrived for withdrawal of cheque of Rs.5000/- and counter clerk stated that there is no such amount in his

account because he had withdrawn all the amount which was explained to him. S.N. Prasad learnt that amount of Rs. 95000/- was credited in the account of Jitendra Kumar Sinha. He has also stated that on 27.12.2000 S.N. Prasad had given a written application Ext.-M/5. From Ext.-M/5 it appears that S.N. Prasad had given an application dated-27.12.2000 to branch manager has stated that all the deposit and withdrawal been made within full Knowledge and he confirmed the same. He had further stated that he had authentication forgotten alteration of the cheque of Rs.95,000.

When on 27.12.2000 S.N. Prasad had given application that he confirms the transaction made from his account and he forgot to authenticate the alteration in the cheque or Rs. 95,000 so there is no leg to stand the charge No.-1 against Jitendra Kumar Sinha.

33. Next witness is Jagbandhu Baidya he had gone to inquire the matter. He had found interpolation over the cheque of Rs. 95,000 but when the account holder submitted that it was made by him and there is no illegality of the account, then it cannot be said that it was done by the Jitendra Kumar Sinha. Cheque was passed by Ram Lakhan Ram and it was deposited in the account of Jitendra Kumar Sinha at the instance of branch manager B.Hansdha.

Moreover Surya Narayan Prasad account holder has stated that he has given a cheque of Rs. 95,000 to his nephew Shri Jitendra Kumar Sinha deposit is in the account of Jitendra Kumar Sinha. He has seen the cheque and has stated that it was issued by him. It has denied that he had orally made complain to branch manager, officer and passing officer. There is no need to evidence of Jitendra Kumar Sinha. But witness Ranjan Kumar Roy has stated in examination-in-chief on 17.01.2014 the Surya Narayan Prasad has stated in his evidence cheque was written by him and there is no irregularity in the cheque. Further he has stated that it is responsibility of the passing officer to pass the cheque and Asst. Branch Manager Ram Lakhan Ram Passed the cheque and branch Manager Bhua Hansdha passed to credit in O.D. account and cheque of Rs. 95,000/- was bearer and that was transferred in O.D account. There is no such denial it was not passed by Ram Lakhan Ram so charge no.(1) " On 29.09.2000 you had altered the cheque No. 878101 dated 29.09.2000 for Rs. 5000 to 95,000 and debited the same to S.B. A/C No. 8685 of Shri Narayan Prasad and credited the proceeds to your own O.D Account has no led to stand because cheque was passed by the Ram Lakhan Ram and account holder had no complain against Jitendra Kumar Sinha so matter of interpolation have not been proved and established by the management. No evidence have produced that Sri Jitendra Kumar Sinha had interpolated or altered that amount either in words or in figure when Shri S.N. Prasad has stated that was done by him. So management could not succeed to prove and established the charge No.-1 against Jitendra Kumar Sinha.

Now the matter will be discussed in respect of charge No.-2 "On 07.11.2000 you had altered the previous ledger balance Rs. 2200/- as 22200 and debit a Cheque (No.- 878104 dt.-07.11.2000) for Rs. 20,000/- fvg. Mr Brijesh Kumar to the SB A/c No. 8685 of Shri Surya Narayan Prasad amd cheque was paid in cash"

It is pertinent to note that in both the charges there is the same S.B Account No.-8685 and account holder is S.N. Prasad is Uncle of delinquent Jitendra Kumar Sinha.

There is charge of altering the previous ledger balance of Rs. 2200 as Rs. 22,2000 and debiting a cheque No.- 878104 dt.-07.11.2000 for Rs. 20,000 favouring Sri Brajesh Kumar and the cheque was paid in cash. In this respect evidence and document of both the management and the workman will be dealt to arrive at the final conclusion in respect of the charges. Therefore the matter will be discussed about the punishment given to Mr. Jitendra Kumar Sinha.

In this respect management witness is M.A Khan, who was enquiry officer. So his evidence is not relevant for the finding into the charge No.-2. Next witness is Bhua Hansdha, who has stated that Jitendra Kumar Sinha was clerk-cum-cashier at the relevant time. At the time of occurrence he was doing work of ledger clerk and who used to enter into ledger cash credit and debit. In respect of charge he has stated that ledger was checked and interpolation was found. In the entry dt.-23.10.2000 letter two (2) was interpolated before the amount Rs. 2200 and payment was made of the amount Rs.20,000 while in the account there was only amount Rs.2200. In cross-examination he has stated that customer handover the cheque to the clerk at cheque cash counter and token is issued thereafter amount is debited by passing officer and cheque is sent to passing officer and when cheque is passed then it is sent to the counter for payment. further he has states that he is branch manager he had detected fraud. He himself had not seen committing the fraud. There is no cross-examination on point of withdrawal of Rs. 20,000 Further there is also evidence of this witness that at the time of occurrence Jitendra Kumar Sinha was ledger clerk and the balance in ledger entry dt.- 23.10.2000 was of Rs. 2200 .

34. Next witness on behalf of the management is Jagbandhu Baidya he was Senior Manager in Circle Office, Patna from the year-2000. He went to inquire into the matter. He has stated in para-4 that occurrence happend on 07.11.2000. Cheque of Rs. 20,000 was debited by making alternation in ledger balance amount of Rs. 2200 and in the left side '2' was written it was made Rs. 22,200 and cheque was passed, cash payment was made. In cross-examination he has stated that one day he has gone to inquire into the matter. There is no cross-examination on the point of withdrawal of Rs. 20,000.

35. Next witness on behalf of the management Ram Lakhan Ram has stated that at the relevant time he was working as passing officer. He has stated in para-4 that cheque of Rs. 20,000/- was sent for withdrawal of Rs. 20,200 at that time balance amount in the account of S.N. Prasad was Rs. 22,200/- and cheque was passed by the witness. Later on at the time of balance of ledger that facts was detected and that was adjusted by further deposit. He informed the Branch Manager orally and in writing. In cross-examination in para-7 he has stated that he himself had not seen adding letter '2' before amount 2200. From the above evidence it appears that the balance amount of Rs. 2200 was made the amount of Rs. 22,200 and Rs. 20,000 was paid in cash.

From documents Ext-M/1 it appears that branch manager informed the matter to the Asst. General Manager *vide* letter dated- 15.12.2000. He has informed that on 23.10.2000 in the same S.B. Account he (Jitendra Kumar Sinha) altered the balance from Rs. 2200 to Rs. 22,200 and allowed a debit of cheque No.- 878104 dated-07.11.2000 to Rs. 20,000/- on 13.12.2000 he had deposited cash for 25,000/- to clear the overdraft in the S.B A/C. In this case there is no alteration in cheque 878104 dt-07.11.2000 to S.B. Account No.-8685 of S.N. Prasad. *Vide* Ext.-M/5 S.N. Prasad has stated that on 07.11.2000 he has issued a cheque of cheque no.- 878104 of the amount Rs. 20000. From Ext.-M/6 it appears that Assistant Manager has sent letter to Jitendra Kumar Sinha about the irregularities/lapse in which it has been stated in para-3 that on 13.12.2000, you (Jitendra Kumar Sinha) had deposited Rs. 25000/- in cash to wife off the extra debit and the same had been admitted by you to the investigating official. Ext.-M/7 is the explanation given by Jitendra Kumar Sinha to Asst. General Manager, in which it has been stated that there was equal marked and due to this deceptively the balance seemed to be 22,200 in stead of Rs. 2200/- and after a few days *i.e.* on 3.12.2000 the account holder himself informed about the excess withdrawal and accordingly he suggested him to deposit the amount so excessively withdrawn. Thereafter on the same date-13.12.2000 he sent a sum of Rs. 25000 in cash the same was deposited by Jitendra Kumar Sinha.

The evidence of this points are the witness and documents on behalf of the management. Witness No.-1 on behalf of the workman is Surya Narayan Prasad account holder of S.B. A/C No. -8685. He has stated in para-4 that bank informed about the overdraft in his account and this witness had deposited amount alongwith interest. In cross-examination he has stated that Jitendra Kumar Sinha is his nephew. This witness is cannot be witness of interpolation in the ledger.

36. Next witness is Jitendra Kumar Sinha (delinquent workman) himself. He has stated that he was joined he service in Indian Bank in December, 1994 at Sihuli Branch on the post of clerk-cum-cashier. In September, 1997 he

was posted at Gaya Branch and was worked as Secretary at Gaya Branch of Indian Bank Employees Association. He denied that 07.11.2000 the amount in the account of his uncle was 2200 and by adding the letter '2' he made the amount Rs. 22,200. In cross-examination, he has stated that he does not know that representative of the union had agreed before Asst. Labour Commissioner to give punishment except removal from service because he was not present before Asst. Labour Commissioner. There is no evidence for consideration in respect that charge No.-2.

37. Next witness on behalf of the workman Ranjan Kumar Roy who was clerk-cum-cashier Indian Bank of Patna, main branch and general secretary of Indian Bank Employees Association, Bihar/Jharkhand. He has stated that enquiry was not fair. He has stated that in respect of proposed punishment, he has made complaint before Asst. Labour Commissioner. Further he has stated that at the relevant time of occurrence there was provosion of economical punishment like stoppage of increment or dismissal from service and before Asst. Labour Commissioner representative of the management indicated that management will consider for not dismissal from service. Settlement dt-10.04.2002 has not retrospective effect.

In further examination in Chief Ranjan Kumar Roy has stated that he was defence representative during domestic enquiry. Further he has stated in para-3 that seldom by mistake any amount is debited in any account then amount of overdraft is recovered from account holder. Further he has stated that in the account of Surya Narayan Prasad amount of Rs. 20,000 was debited and there was overdraft of Rs. 18,000. Surya Narayan Prasad deposited amount Rs. 25,000 to finish over draft. In cross-examination this witness has stated that he does not remember when Surya Narayan Prasad had deposited of amount of Rs. 25,000.

This is not a case of only over draft. There was interpolation in the ledger and amount of Rs. 2200 was made to Rs. 22,200. There is no satisfactory explanation or evidence in this regard. Though amount is Rs. 25,000 was deposited and over draft was compensanated. This is the case of tempering in the ledger and there is no satisfactory evidence how the previous balance was changed in the ledger and amount of Rs. 2200 was changed of Rs. 22,200. So, charge No.-2 is proved.

When the charge has been proved that matter comes to the punishment. Decision cited on behalf of the workman is the case of Cooper Engineering Limited Vs. P.P. Mundhe equivalent citations is 1975 AIR 1900, 1976 SCR (1) 361 in this case it has been hold that labour Court should give opportunity to adduce evidence a fresh and this opportunities has been given to the workman. So this is not applicable in the present case. Similar view has been expressed in 2014-1-LLJ-555 (Kant).

In memorandum of settlement dated-10.04.2002 it has been stated that the provision of the said Awards, the first

Bipartite Settlement dt-19.10.1966 and / or other subsequent settlement dt-11.11.1966, 14.12.1966, 23.12.1966, 31.10.1979, 28.11.1981, 08.09.1983, 17.09.1984 and 14.02.1995 hereafter collectively referred to as the said settlement shall stand superseded and substituted by and in the manner detailed here under.

Since all previous Bipartite Settlement has been superseded and substituted of this memorandum of settlement dt-10.04.2002 and Jitendra Kumar Sinha has found guilty of one of the charges for altering the entry in the ledger which was detected later on. So action of the management of India Bank in imposing punishment, compulsory retirement from services of Shri Jitendra Kumar Sinha was legal and justified and Jitendra Kumar Sinha is not entitled to get any relief.

This is my award accordingly.

Dictated & Corrected by me.

BIPIN DUTTA PATHAK, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2006.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (संदर्भ सं. 106/12) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.10.2015 को प्राप्त हुआ था।

[सं एल-12011/73/2011-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2006.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 106/12) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 15/10/2015.

[No. L-12011/73/2011-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/106/12

General Secretary,
Pratadit Karamchhari Kalyan Manch,
F-1, Tripti Vihar,
Opp. Engineering College,
Ujjain (MP)

...Workman/Union

Versus

Branch Manager,
Bank of India,
Kanchan Bag Branch,
Indore

...Management

AWARD

Passed on this 14th day of August, 2015

1. As per letter dated 27-9-12 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12011/73/2011-IR (B-II). The dispute under reference relates to:

"Whether the demand of the Union for payment of difference of wages as paid to permanent employees for the period from 15-3-89 to 20-1-03 as per bipartite settlement to Shri Ashok Sunkare is just and proper? What relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim through General Secretary, Daily Wage Bank Employee Union Ujjain. The case of 1st party is that he was working with 2nd party Bank as daily wage peon from 15-3.89. He was working for 8 hours a day. He completed more than 240 days continuous service during each of the year. He was eligible for regular appointment. Workman claimed wages s per day scale of regular employees and bonois. Then management terminated his service without notice, no retrenchment compensation was paid to him. Termination of his service is in violation of Section 25-F of ID Act. workman raised dispute R/160/03 regarding termination of his service. In present reference, he is claiming difference of wages between wages paid to him and wages under 4th to 9th settlement. He worked under different Branch Managers. 2nd party has not followed the settlements. It is punishable under Section 29 of ID Act. Workman is claiming difference of wages with interest.

3. 2nd party filed Written Statement on 16-1-2015 opposing claim of the workman. 2nd party submits that present dispute is raised for payment of difference of wages from 1989 to 20-1-02. As per Bipartite Settlement, the terms of reference is illegal. Appropriate Government should not have decided the disputed facts relating to engagement of workman by management. The Bipartite Settlement is applicable to the casual labours. The wages are decided on the basis of nature of work allotted and working hours. If casual labours are required to work normal working hours, he is paid wages declared by Ministry of Labour time to time. 1st party is not workman under provisions of ID Act. The appointments in Bank are covered by statutory rules regulations and procedure prescribed. 1st party workman is in habit of indulging his necessarily delegations raising one after another disputes without any reasons. R/163/03

raised by workman for regular employment. Said dispute is pending. Application 3/06 is filed under Section 33-A of ID Act alleging cheat in service conditions. Workman is not member of Union. Union has no locus to raise the dispute. Employer employee relationship does not exist. There is no industrial dispute between parties. That Ist party workman was not employee on regular basis. He was not appointed against sanctioned post. On such ground, 2nd party submits that reference be answered in its favour.

4. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|--|--|
| “(i) Whether the demand of the Union for payment of difference of wages as paid to permanent employees for the period from 15-3-89 to 20-1-03 as per bipartite settlement to Shri Ashok Sunkare is just and proper?” | In Negative |
| (ii) If not, what relief the workman is entitled to?” | Workman is not entitled to any relief. |

REASONS

5. Workman is claiming difference of wages as per bipartite settlement. In support of his claim, workman filed affidavit of his evidence. Workman remained absent for his cross-examination. Union Representative Shri R. Nagwanshi submitted in writing on 27-8-2014 that Ist party workman not giving oral evidence. Management also did not adduce any evidence in the matter. As workman remained absent for his cross-examination, his evidence on affidavit cannot be considered by valid evidence.

6. With respect to the claim, learned counsel for 2nd party Shri Shashi relies on ratio held in case of:

"Indain Drugs and Pharmaceuticals Ltd. *Versus* their workman reported in 2007(1) SCC 408. Their Lordship held right to livelihood or work cannot be stretched so far as to mean that everyone must be given a job Article 42 has been deliberately kept by the Founding Fathers in the directive principles chapter and hence made unenforceable. Dealing with the rights available to the employees distinct from those available to permanent employees held temporary employees who include casual, daily rated *ad hoc* employees etc have no right to the post nor to be continued in service nor to get absorption far less of being regularised and getting regular pay nor can a direction be passed that a temporary employee be continued till the age of superannuation since there is no age of superannuation as such employees have no right to the post at all.

7. As workman has not adduced valid evidence and considering ratio in above case. I record my finding in Point No 1 in Negative.

8. In the result, award is passed as under:—

(1) The demand is the Union for payment of difference of wages as paid to permanent employees for the period from 15-3-89 to 20-1-03 as per bipartite settlement to Shri Ashok Sunkare is not justified.

(2) Workman is not entitled to any relief.

R.B. PATLE, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2007—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नेशनल बैंक के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं. 15/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.10.2015 को प्राप्त हुआ था।

[सं० एल-12012/112/2011-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2007.—In pursuance of Section 17 of Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 15/2012) of the Cent.Govt.Indus. Tribunal - cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15/10/2015.

[No. L-12012/112/2011-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 15 of 2012

Parties: Employers in relation to the management of Punjab National Bank, West Benal Zonal Office

AND

Their workmen

Present: Justice DiPAK SAHA RAY,
Presiding Officer

Apperance:

On behalf of the : None
Management

On behalf of the : Mr. Ranjay De, Ld. Counsel
Workman

State : West Bengal.

Industry : Banking

Dated: 22nd September, 2015.

AWARD

By Order No.L-12012/112/2011-IR(B-II) dated 26.09.2012 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and sub-section (2A) of the industrial Disputes Act, 1947 referred the following disputes to this Tribunal for adjudication:

"Whether the action of the management of Punjab National Bank imposing the punishment of compulsory retirement with superannuation benefits upon Shri Asesh Kumar Misra *vide* Order dated 06-10-2010 is legal and justified? Who relief the workman is entitled?

2. It appears from the record that on 06.05.2014 when the matter was taken up last, Ld. Counsel for the workman appeared and submitted that on the basis of an application filed by the concerned workman under Section 2A(2) of the Industrial Disputes Act, 1947, Case No. CGIT - 23 of 2012 was initiated. Subsequently on the selfsame issue instant order of reference has been recieved by this Tribunal and accordingly this Reference Case No. 15 of 2012 was initiated. Reliefs claimed in both the cases are also same. He accordingly did not press the instant reference.

3. Considering the above submission of the Ld. Counsel for the workman instant reference was rejected being not pressed.

4. An Award is passed accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 22nd September, 2015.

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2008.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय जबलपुर के पंचाट (संदर्भ सं. 158/01) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं० एल-12011/145/2001-आई आर(बी-II)]
रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2008.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby published the Award (Ref. No. 158/01) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Bank of India and their workmen, received by the Central Government on 15/10/2015.

[No.L-12011/145/2001-IR(B-II)]
RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT,
JABALPUR**

NO. CGIT/LC/R/158/01

General Secretary,
Dainik Vetan Bhogi Bank Karmachari Sangathan,
Hardev Niwas, 9,
Sanver road,
Ujjain.

Workman/Union

Versus

General Manger,
Bank of India,
Head Office, Express Towers,
Nariman Point
Mumbai

Management

AWARD

Passed on this 17th day of August, 2015

1. As per letter dated 10-10-01 by the Government of India, Ministry of Labour, New Delhi the reference is received. The reference is made to this Tribunal under Section-10 of I.D. Act, 1947 as per Notification No. L-12011/145/2001-IR(B-II). The dispute under reference relates to:

"Whether the action of the management of Bank of India, Nariman Point, Mumbai in terminating the services of Shri Vali Mohammed, Badli Sepoy from March 1997 instead of regularizing him is legal and justified? If not what relief the concerned workman is entitled to?"

2. After receiving reference, notices were issued to the parties. Workman filed statement of claim at Page 3/2 to 3/7. Case of 1st party is that he was working with 2nd party as permanent peon from 14-10-89. He was working with devotion. He was doing work of distribution of letters, clearing work, stitching bundles etc. he was paid bonus under Section 8 of Payment of Bonus Act for year, 91 to 1996-97. During 1995-96, he was given bonus for 240 days in 1996-97 for more than 240 days. He had worked more than 240 days. His services were terminated without notice in March, 97. He was working continuously in the Bank for 8 years under different Branch Manager.

3. Workman was granted loan of Rs. 95,000/- under Prime Minister Employment Scheme. By letter dated 5-5-2000 by Union, it was informed that workman would work as permanent employee. The loan was taken for support of his family. It is reiterated that the services of workman are terminated without notice, retrenchment compensation was not paid to him despite his working more than 240 days during each calendar year. On such ground, workman prays for his reinstatement with backwages.

4. 2nd party filed Written Statement at Page 4/1 to 4/3 opposing claim of the workman. 2nd party denies that workman is member of the Union. Ist party directed to produce membership record and registration certificate 2nd party submits that some persons were engaged on daily wages in leave vacancy of regular staff as per exigency. As per Bipartite Settlement dated 19-10-66, employment of such person starts from beginning of day and ends at evening of the same day. Workman is pursuing independent vocation. Workman was recommended loan of Rs. 95,000 on 9-1-97. After sanction of the loan, the workman purchased Tempo MP-33T-816. Workman had contributed Rs. 27,000/- He was granted Govt. subsidy of Rs. 7500/-. Workman repaid loan amount within 3 years *i.e.* 22nd May 2000. Workman had no right of regularisation in service as workman was engaged intermittently. Relief claimed by workman cannot be granted.

5. Ist party workman filed rejoinder at Page 14/1 to 14/3 reiterating its contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:—

- | | |
|---|--|
| (i) Whether the action of the management of Bank of India, Nariman Point, Mumbai in terminating the services of Shri Vali Mohammed, Badli Sepoy from March 1997 instead of regularizing him is legal and justified? | In Affirmative |
| (ii) If not, what relief the workman is entitled to?" | Workman is not entitled to any relief. |

REASONS

7. Workman is challenging termination of his service in violation of Section 25-F of ID Act. In support of his claim, workman filed affidavit of his evidence. Workman says he was working more than 240 days with 2nd party each of the year since 14-10-89. He was paid bonus from 1990-91 to 1996-97. He was terminated without notice. In his cross-examination, workman says Branch manager Shri R.L. Gurmani appointed him in 1989. The post was not advertised, his name was not sponsored through Employment Exchange, he was not interviewed. Appointment letter was not given to him. He was engaged on daily wages. He was paid wages at end of the month. He was paid wages for his working days. Works of pen was taken from him. 4-5 posts of peon were sanctioned in the branch. He was engaged and discontinued by the Bank when services were required in the year 1989 for 89 days. His attendance was maintained in the diary maintained by the bank. Said diary was kept with Shri H.S. Thakur. His signature was not obtained in

the diary. He was unable to tell for how many days each of the year he had worked. He denies that he was working in the bank till 1994. Workman has admitted signature on Exhibit M-1. He was granted loan as per document Exhibit M-2. Loan of Rs. One Lakh was granted to him as per Exhibit M-3. Loan amount is repaid by him. Workman in his pleading and evidence says his services are terminated in march 1997. In document Exhibit M-1, affidavit dated 28-8-96 workman has shown himself unemployed. It is inconsistent with his evidence. Affidavit Exhibit M-1 is considered, workman was employed on 23-8-96. It is impossible to believe that is services were terminated in March 1997. Exhibit M-2 shows loan of Rs. One Lakh was requested by workman was recommended by the State Bank Shajapur. As per Document Exhibit M-3 loan amount was repaid by workman. Account was closed on 5-5-2001. Evidence of workman is inconsistent with the documentary evidence. Therefore his evidence cannot be relied about completing 240 days service preceeding termination of his service in March 1997.

8. Management's witness Shri Gurnani filed affidavit of his evidence supporting contentions of 2nd party about appointment of candidates following recruitment process. Ist party workman Wali Mohd. was never appointed by Competent Authority. Workman was never on roll of the Bank. Workman not worked for 240 days during preceding year. In his cross-examination, management's witness says that Exhibit M-5 have been followed while appointing workman. He claims ignorance. In his further cross examination, management's witness says he was working in Sujalpur branch during 1989 to 1990. He did not discuss with Branch Manager working during 1989 to 1990. He claims ignorance about payment of bonus to the workman.

9. The documents about payment of bonus are not proved. The documents produced by workman Exhibit W-1, 2 reply in conciliation proceedings. Management had denied 240 days working by workman. The document Exhibit W-3 to W-7 are orders of appointment given to Shri Ajay Kumar Jain, Yeshwant Chandel, Om Prakash Parmar & Rishipal Marmatt issued on 24-6-05 as per the settlement. As evidence of workman is not cogent about completing 240 days continuous service, the promotion of workman cannot be said illegal retrenchment. Workman is not covered under Section 25 (B) of ID Act. Therefore claim of workman under Section 25-H cannot be accepted. For above reasons, I record my finding in Point No. 1 in Affirmative.

10. In the result, award is passed as under:

(1) The action of the management of Bank of India, Nariman Point, Mumbai in terminating the services of Shri Vali Mohammed, Badli Sepoy from March 1997 instead of regularizing him is proper and legal.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2009— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कोलकता पतन न्यास के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकता के पंचाट (संदर्भ संख्या 17/2006) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं० एल- 32011/14/2005-आईआर (बी- II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2009.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 17/2006) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 15/10/2015.

[No. L-32011/14/2005-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 17 of 2006

Parties; Employers in relation to the management of
Kolkata Port Trust

AND

Their workmen.

Present: **Justice Dipak Saha Ray,**
.....Presiding Officer

Appearance:

On behalf of the : Mr. M.K. Das, Industrial
Relations Officer with
Management Mr. G. Mukhopadhyay, Industrial
Relations Officer.

On behalf of the : Mr. N. Sinha, Joint Secretary of
Workmen the Union.

State: West Bengal Industry: Port & Dock.

Dated: 24th September, 2015.

AWARD

By order No. L-32011/14/2005-IR(B-II) dated 17.05.2006 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of Kolkata Port Trust, Kolkata in imposing on punishment of reduction of basic pay of Shri Subrata Chakraborty, LDC to Rs. 2650/- P.M. from the existing pay of Rs. 2720/- P.M. in the present pay scale of Rs. 2160-70-2720-75-3845 w.e.f. 01.12.1999 with cumulative effect and as a result of the same not promoting him to the post of UDC w.e.f. 07.04.1998 while promoting other LDCs junior to him as legal and justified? If not, to what relief Shri Subrata Chakraborty is entitled for?"

2. The case of the union, in short, is as follows:

Shri Subrata Chakraborty the concerned workman who was a Lower Division Clerk working in the Health Section of the Kolkata Port Trust, was entrusted to look after the establishment matters including issuance of superannuation letters/ notices well in advance to all the Safai Mazdoors belonging to Dock Conservancy (Part IV). Every year a circular was issued by the Health Officer working as sectional head mentioning the names and particulars of the staff who were due to retire during the year and the concerned clerks including Shri Chakraborty used to do all retirement work including issuance of superannuation letter/notice in time after following the said circular issued by the Health Officer. But the said i.e., Circular No. HO/Est./Cir dated 15.07.1993 issued by the Health Officer. But the said i.e., Circular No. HO/Est./Cir. dated 15.07.1993 issued by the Health Officer was in respect of the staff working under him who were due to retire during 1993 and 1994; but in that circular names of Shri Kartala Balmiki and Shri Choual Singh Balimiki who were due to retire on 01.05.1994 and 01.06.1994 respectively did not find any place. As a result, Shri Chakraborty did not issue superannuation letter to Shri Kartala Balmiki as his name was not incorporated in the said circular. For Non-issuance of the said superannuation notice, Shri Kartala Balmiki got opportunity to work for 10 months more beyond his actual date of retirement. For the said reason show-cause notice was issue upon the concerned workman namely Shri Chakraborty on 27.02.1995 by the Medical Officer (Health) directing him to explain the reason behind non-issuance of retirement notice to Shri Kartala Balmiki. Shri Chakraborty submitted his reply on 17.04.1995 stating that he omitted to issue the said superannuation letter as the name of Shri Kartala Balmiki was not mentioned in the concerned circular No. HO/Est./Cir dated 15.07.1993. Subsequently on the basis of the report of the Administrative Officer, Charge-sheet No. CMO/EN2/3/95-96 dated 05.09.1995 was issued by the Chief Medical Officer against Shri Chakraborty wherein 3 charges were levelled against him. Subsequently enquiry was held by the Enquiry Officer and findings of the said enquiry was submitted to the Disciplinary Authority who by issuing order dated 01.12.1998 imposed punishment by way of reduction of pay as Rs. 2650/- per month from his existing pay of 2720/- per month and also by stopping one increment. The concerned workman preferred appeal

before the Appellate Authority, but lost the appeal. He, thereafter, prayed for review of the punishment imposed upon him before the Chairman, Kolkara Port Trust; but the said prayer was also rejected. Ultimately, industrial dispute was raised by the workman. Hence this reference.

3. The management has opposed the case of the workman by filling written statement contending *inter-alia* that all the documents required to prepare superannuation letter of Shri Kartala Balmiki viz. service sheets, leave account sheets, G-53 (containing age) were with Shri Subrata Chakraborty. The said G-53 was given to him on 01.06.1992 i.e., long before the date of superannuation of Shri Kartala Balmiki. So Shri Chakraborty was well equipped to find out the date of retirement of Shri Balmiki. In spite of that no superannuation letter was issued to Shri Balmiki. As a result Shri Balmiki was allowed to work for 10 months even after his retirement. Accordingly 3 charges were levelled against the concerned workman. He also submitted his reply denying the said charges. Thereafter enquiry was held by the Enquiry Officer appointed by the Disciplinary Authority. Shri Chakraborty participated in the enquiry. He was given opportunity to defend his case. After completion of the enquiry, Enquiry Officer submitted his report finding the workman guilty of the charges. A copy of that report was also handed-over to him. He filed his representation which was considered and the concerned workman was punished by way of reduction of his pay to Rs. 2650/- per month from his existing pay of Rs. 2720/- per month and also by stopping one increment. Against that order of punishment, the concerned workman preferred appeal which he lost. He also prayed for review of the same. But he lost the same too. It is contended that the enquiry was held in accordance with the provisions of Kolkata Port trust Employees' (Classification, Control and Appeal) Regulations and that all opportunities as well as natural justice were extended to the concerned workman at every state of the domestic enquiry. Accordingly the management has prayed for rejection of the claim of the workman.

4. The union has examined two witnesses including the concerned workman and proved documents marked Exts. W-01 to W-12 in order to prove its case.

5. In management has also examined one witness and proved documents marked Exts. M-01 to M-19 in support of its case.

6. In this case, domestic enquiry was held for the alleged act of dereliction of duties of the workman and in that enquiry charge levelled against the workman was proved and accordingly the Disciplinary Authority imposed punishment by way of reduction of his existing pay from Rs. 2720/- per month to Rs. 2650/- per month with effect from 01.2.1998 with cumulative effect and he would be eligible to earn his annual grade increment from 01.12.1999.

7. It is alleged by the union that the domestic enquiry was not proper and valid as natural justice was not extended to the workman during that enquiry and that the workman was denied the opportunity to defend his case.

8. Accordingly, in view of the contention and counter contention of the parties, the Tribunal is required to ascertain whether or not the domestic enquiry held against the workman was valid and proper.

9. Now from the order dated 03.03.2015 it appear that after hearing both sides and after considering the evidence on record as well as the documents placed before the Enquiry Officer, the Tribunal has come to a conclusion that the report of the Enquiry Officer is legal, valid and proper as the same has been prepared after observing all the rules and formalities of the domestic enquiry.

10. From the said order dated 03.03.2015 it further appears that in the domestic enquiry the Enquiry Officer considered the contention of the union in the matter of omission of not issuing the superannuation letter, was due to non-inclusion of the name of Shri Kartala Balmiki with reference to the evidence on record and came to the decision that the workman was guilty.

11. Since it has been decided that the domestic enquiry held against the workman is valid and since the said order has not been challenged by any of the parties, the union, at this stage, has no right to agitate that the charge framed against the workman is false because such omission occurred due to non-inclusion of the name of Shri Kartala Balmiki in the said circular dated 15.07.1993. Accordingly, it appears that the domestic enquiry was valid and the findings of the Enquiry Officer were not perverse.

12. So no question of victimization or unfair labour practice or management having bias against the workman can arise once it is held that the findings of misconduct alleged against the workman were properly arrived at and that the domestic enquiry was in no way vitiated.

13. Having regard to the facts and circumstances and the discussion made above it appears that due to the dereliction of duties of the concerned workman, one Shri Kartala Balmiki, the employee of the management, worked ten months even after his superannuation for which the management surely sustained heavy loss. For such dereliction of duties the basic pay of the concerned workman was reduced to Rs. 2650/- per month from his existing pay of Rs. 2720/- (i.e. one annual increment was deducted) per month with effect from 01.12.1998 with cumulative effect and he would be eligible to earn his annual grade increment with effect from 01.12.1999.

14. Considering the gravity of the misconduct with reference to the quantum of punishment it appears that the punishment as imposed is not disproportionate to the gravity of misconduct and that such punishment is in commensurate with the gravity of the act of misconduct.

15. In view of the above facts and circumstances, the nature and gravity of misconduct and the quantum of punishment imposed by the employer, it appears that there is no reason to interfere with the decision of the management/Kolkata Port Trust in imposing the said punishment to the concerned workman.

16. Accordingly the instant reference is answered in the affirmative and the concerned workman is not entitled to get any relief whatsoever.

The 24th September, 2015.

Dated, Kolkata,

JUSTICE DIPAK SAHARAY, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का०आ० 2010—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार कोलकाता पतन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ सं० 33/2007) को प्रकाशित करती है जो केन्द्रीय सरकार को 15.10.2015 को प्राप्त हुआ था।

[सं० एल-32011/11/2007-आईआर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2010.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 33/2007) of the Central Government Industrial Tribunal-Cum-Labour Court, Kolkata now as shown in the Annexure in the Industrial Dispute between the management of Kolkata Port Trust and their workmen, received by the Central Government on 15.10.2015.

[No. L-32011/11/2007-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 33 of 2007

Parties: Employers in relation to the management of
Kolkata Port Trust

AND

Their workmen.

Present: Justice DIPAK SAHARAY,
Presiding Officer

Appearance : Mr. G. Mukhopadhyay, Industrial
On behalf of the Relations Officer.
Management

On behalf of the : Mr. K.K. Banerjee, Assistant
Workmen General Secretary of the Union.

State: West Bengal. Industry: Port & Dock.

Dated: 28th August, 2015.

AWARD

By order No. L-32011/11/2007-IR(B-II) dated 29.11.2007 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the Port Trust management in realizing the licence fee (i.e. house rent) w.e.f. 01.07.1996 for the Class-IV quarters under occupation of the employees at different Mazdoor lines of Kolkata Port Trust and alleged sub-standard by the occupants, at the Rates which are applicable for standard quarters (vide Circular No. Lab/Housing Policy/P-III/195 dated 07.03.2005) is justified and legal? If not, to what relief the workmen concerned are entitled for?"

2. The case of the union is, in a nutshell, as follows:

The pay scale of the Class—IV employees of the Port Trust was Rs. 3700-60 -4180-75-5830. As per the Central Govt. specification the Class-IV employees having basic pay not less than Rs. 3000/- per month are entitled to get quarters having 56 to 65 square meters of living area. But the employees of the Port Trust are allotted quarters each of which was 49.24 square meters of living area. It is alleged that the quarters of the Kolkata Port Trust are in wretched and unhygienic condition and unfit for human habitation. The same are not maintained properly. In spite of that the Kolkata Port Trust is deducting House Rent from the pay of the employees @ Rs. 5/=, Rs. 10/= Rs.15/= and Rs. 20/= on the basis of the conditions of the quarters. Not only that the Kolkata Port Trust management by issuing a Circular No. Lab/Housing Policy/P-III/195 dated 07.03.2005 started realizing licence fee @ 10% for occupation of Class-IV type quarters. It is the contention of the union that the employees who are occupying the said sub-standard Class-IV type quarters are actually paying 30% of their basic pay in addition to the exorbitant licence fees as imposed by the said circular dated 07.03.2005. It is alleged that such action of the management in realizing the licence fee for Class-IV type quarters is unjust and illegal, Accordingly the union raised industrial dispute. Hence this reference.

3. Management has contested this case by filing written statement contending inter alia that on the basis of the memorandum of settlement arrived on 06-12-1994 between All India Federations of unions of the Major Ports and Dock Labour Boards and the management of Major Port Trust and Dock Labour Boards, it was decided that "Recovery of rent for the Ports/D.L.Bs. quarters will be made on living area basis under Government of India

instruction below F.R. 45(A)” and accordingly the management started recovering the rent for occupation of Port quarters as per the provisions of Fundamental Rules 45(A). Subsequently on the basis of the settlement dated 02-08-2000 it was agreed that recovery of rent for Port Quarters would be made on living area basis under Govt. of India orders as revised from time to time under FR 45(A). Ultimately rate of rent under FR 45(A) was revised by the Govt. of India and a circular bearing No. Housing Policy/P-III/195 dated 07.03.2005 (Ext. M-11) was issued. It is contended that the standard Class-IV quarters consist of two rooms, one kitchen, verandah/courtyard, latrine and bath room and such standard quarters are allotted to the willing employees on the basis of their individual application and that it is not the condition of service that the employees are to stay in Port Trust accommodation. It is further alleged that the present union viz. National Union of Waterfront workers is affiliated to Indian National Port and Dock Workers Federation (INTUC), and since Indian National Port and Dock Workers Federation (INTUC) is one the parties to the Memorandum of Settlement dated 06.12.1994, the present union is not entitled to raise any dispute before the Tribunal in the matter of recovery of rent under the provisions of F.R. 45(A). Accordingly, it is prayed that the instant reference may be answered in the affirmative.

4. In support of the case, union has examined five witnesses and also proved five documents (Exhibits W-01 to W-05).

5. The management has examined only one witness and has proved fifteen documents to substantiate its contention made in the written statement.

6. On perusal of the pleadings of the parties it appears that a memorandum of settlement was arrived at on 06.12.1994 between the representatives of All India Federations of unions of the Major Ports and Dock Labour Boards and the management of Major Port Trusts and Dock Labour Boards over the demands of wage revision etc. including the procedure for recovery of rent of accommodation provided by the Port Trusts and Dock Labour Boards.

7. In Clause 19.2 of the said settlement it has been mentioned "Recovery of rent for the ports/DLBs quarters will be made on living area basis under Government of India instruction below 45(A)".

8. In this case there is no controversy that the present union who raised instant industrial dispute, is affiliated to the Indian National Port and Dock Workers Federation (INTUC) who was the party to the said settlement. There is also no controversy that the Class-IV quarters are two roomed having than 56 square meters living area.

9. In this case the union has raised industrial dispute alleging that the Class-IV quarters provided to the employees are all sub-standard and the same are not fit for

human habitation. According to the union, the living area of the said quarters are not as per the CPWD specification, because the living area of each of the said quarters is less than 56 square meters. But according to the management all the said quarters are standard quarters as per the specification of CPWD, because each of the said quarters consists of two rooms, one kitchen, latrine, bathroom and verandah/courtyards. So the initial burden is upon the union to prove that the quarters in question are sub-standard and are not fit for human habitation.

10. But in this case the union has failed to produce any document to establish that as per the CPWD specification living area of Class-IV quarters should not be less than 56 to 65 square meters. Nor has any documents is forthcoming to show that the said quarters are in wretched condition. All the witnesses examined by the union, in their evidence have stated that they do not know the reason why they have stated that the quarters are sub-standard.

11. From the oral testimony of all the witnesses it is evident that the condition of the quarters is same as it was existed at the time of allotment. None of the witnesses has stated that they said quarters are in wretched condition and not fit for human habitation. No evidence is also forthcoming to establish that as per the service condition employees are to stay in Port Trust accommodation. The witnesses of the union have also made it clear that there was no compulsion to occupy the said quarters.

12. So it appears that there is precondition of service that the employees are to stay they quarters of the Port Trust. On the other hand, the oral evidence discloses that the employees were never forced or pressurized to take possession of the quarters. The said witnesses have said that they voluntarily occupied the quarters for their own benefit. The Contention of the management is that on the basis of the application of the individual employee, the quarters in question are allotted. The said contention has not been denied. So it appears that on the basis of the application of the employees the quarters are allotted. So at this stage the concerned workman are not entitled to ventilate their grievance that for such occupation of the quarters, they are loosing huge amount house rent *i.e.*, 30% of the basic pay. Because they are always at liberty to vacate the quarters for getting house rent @30% of the basic pay.

13. On consideration of the facts and circumstance and in view of the discussion made above, it appears that the management is entitled to recover/realize the licence fee (house rent) in respect of the quarters of Port and Dock Labour Board under Government of India orders as revised from time to time under FR 45(A).

14. Accordingly, the instant reference is answered in the affirmative and the concerned workmen are not entitled to get any relief whatsoever.

Dated, Koklata,
The 28th August, 2015

JUSTICE DIPAK SAHA RAY, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

Award Passed On: 07.09.2015

का.आ. 2011—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार पंजाब नैशनल बैंक के प्रबंध तंत्र के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण / श्रम न्यायालय, चंडीगढ़ के पंचाट (6/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं. एल-39025/01/2010-आईआर(बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2011— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 6/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Chandigarh as shown in the Annexure, in the industrial dispute between the management of Punjab National Bank and their workmen, received by the Central Government on 15/10/2015.

[No. L-39025/01/2010-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

**BEFORE SHRI SURENDRA PRAKASH SINGH,
PRESIDING OFFICER, CENTRAL GOVT.
INDUSTRIAL TRIBUNAL-CUM-LABOUR
COURT-I, CHANDIGARH,**

Case No. ID 6 of 2013

Shri Ashok Kumar son of Shri Chanan Ram (formerly working as clerk at Branch Officer Aur Nawanshahar, resident of House No. 240, Satguru Nagar, Saloh road, Nawanshahar, district SBS Nagar.

Workman

Versus

1. Punjab National Bank through its Circle Head, Circle Office Hoshiarpur.

2. The General Manager (Personnel), Punjab National Bank, Bhikaji Cama Place, New Delhi.

Respondents

APPEARANCES

For the Workman : Shi Ravi Mohan Khanna
Advocate

For the Management : Shi. N.K. Zakhmi Advocate.

1. The workman raised the dispute directly to this Tribunal regarding his forced retirement from service by the respondent management of Punjab National Bank on the certificate issued by the Assistant Labour Commissioner (Central), Chandigarh vide its letter No. 7(7) 2012/ACH dated 16th October 2012 under Section 2(a)2 of the Industrial Disputes Act, 1947 as the conciliation proceedings not concluded in prescribed time under the law. The workman filed claim statement stating there in that workman joined the service with the management on 10.09.1980. However, in March 1996 the workman proceeded on leave after taking due approval of the competent authority. The workman further submitted that under compelling circumstances he could not join duties immediately after sanctioned period of leave. It is stated by the workman that he had to go abroad due to some personal pre occupations and he could not return back for some period of time due to health and financial problems but he continued to submit his applications for sanction of leave and the said applications were duly received by the branch concerned. The workman did not receive any specific notice or letter from the bank with regard to declining his leave or for compliance of any terms and condition. He further stated that workman had sufficient medical leave to his credit and in addition to this workman had also accumulated privilege leave of more than 112 days. No notice was served at his local address and a credit entry of Rs. 91803/- was made by the bank on 8.5.1998 in account No. 13391 of the workman without giving any detail. The workman also pleaded that before proceeded on leave in March 1996 accumulated balance in the PF account of the workman was Rs. 73888.42 and in addition to the above, a sum of Rs. 12501/- reflected in the voluntary provident account to taling Rs. 86,389.85 was available only in the PF account in March 1995 he was contributing to voluntary provident fund besides his normal and statutory contribution to provided fund. The workman was also entitled to the retiral dues such like pension, gratuity and leave encashment. The workman learnt about the impugned action on the part of the management of terminating his service without due process on the ground of voluntary abandonment, withholding of his retiral dues, including pension, gratuity and leave encashment when hereturned to India in October 2010 after recovery of protracted illness in UK. The workman prayed that illegal, unfair, unjust and oppressive order of termination of workman on factually and legally untenable grounds of voluntary abandonment of service may be recalled and revoked and workman be reinstated in service with effect from the date of illegal termination along with the back wages. The workman further prayed that in alternative his legal right to the benefit of pension may not be deprived and he may also be paid gratuity, leave encashment and provident fund contribution along with 18% interest. The petition is also supported by the affidavit of the workman and documents.

2. The management in reply has taken preliminary objection that the claim of the workman deserved to be rejected as he has come to the court after fifteen years and at this belated stage suffer from delay and laches and not maintainable in view of the law laid down by the Hon'ble Supreme Court in the matter CA No. 638 of 2000 Nedungadi Bank Ltd. And K.P. Madhavankutty and others. It is further pleaded by the management that the workman was served charge sheet dated 13.3.1992 and 12.1.1995. In those charge sheets punishment of stoppage of four increments and censure were imposed upon the workman. The workman remained absent *w.e.f.* 3.3.1996 without obtaining prior approval of the leave Registered letter dated 15.3.1996 was issued to his available address for resuming duties which was returned undelivered on 29.3.1996 and redirected to his news address but the same was again returned. Again on 23.4.1996 a letter was sent to resume duties but was returned with the remarks 'not available'. Again registered letter dated 19.6.1996 was sent to him to resume duty which was returned undelivered with the remarks that 'he has left India'. The workman was given notice dated 3.2.1997 by SRM Jalandhar in terms of clause 17(a) of the Vth Bipartite Settlement to report for duties within 30 days from the date of the notice but the workman did not join the duties and SRM Jalandhar vide letter dated 10.3.1997 informed the workman that he is deemed to have voluntarily retired from bank's service with immediate effect *i.e.* 10.3.1997. Management also pleaded that PF amounting to Rs. 79928.41 and gratuity amounting to Rs. 68596 were settled and after adjustment to loan account amount to Rs/ 59077/- a sum of Rs. 89447.41 was credited in his account. As regard pension is concerned the employee was to sign certain documents along with the joint photograph with spouse, which the subject was not done and the workman never contact the bank and he cannot make bank liable for the in action on his part. It is further pleaded that the workman had given GPA in favour of his wife and in that regard had given letter dated nil to the branch conveying that he has been voluntary retired from the bank service and his wife can operate all the account concerned to him. It is further pleaded that the contents of the said letter itself speaks that he was well aware that he has been deemed to have voluntarily retired from service. The management pleaded that the dispute so raised by the workman merit no consideration and the reference by answered in favour of the management.

3. Rejoinder also filed by the workman reiterating the claim made in the claim petition.

4. The workman in evidence filed his own affidavit also examined himself as WW1. He also relied on documents Ex.W2 to W7. The management in evidence filed affidavit of MW1 Ms. Binita Kumari officer PNB who filed her affidavit Ex.M1 and also relied on documents Ex.M2 to M13.

5. I have heard the parties, gone through the evidence and record of the case.

6. The management submitted that the impugned order of deemed voluntary retirement was passed by the management on 10.3.1997 whereas the claim has been filed by the workman after a lapse of about 16 years. The workman admitted in his statement during evidence before this Tribunal that "it is correct that I have raised the industrial dispute vide demand notice dated 3.4.2013. I have not given any explanation as to why I have filed the present claim after a period of more than 16 years." In this context Industrial Disputes (Amendment) Act 2010 has been referred Section 3 amendment of Section 2A(3) provides that the application referred to in Sub-Section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).

7. The workman submitted that he had submitted the demand notice before the conciliation officer on 3.4.2013 and after the failure of the conciliation proceedings the workman preferred this industrial dispute in the year 2013 directly. Even if the after the failure of the conciliation proceedings, the present industrial dispute (claim statement) filed by the workman is highly belated. Further there was no explanation given by the workman for preferring the claim statement which is highly belated.

8. So far the merits of the case are concerned; the workman remained absent *w.e.f.* 3.3.1996 without obtaining prior approval of the leave. Registered letter dated 15/3/1996 was issued to his available address for resuming duties which was returned undelivered on 29.3.1996 and redirected to his new address but the same was again returned. Again on 23.4.1996 a letter was sent to resume duties but was returned with the remarks 'not available'. Again registered letter dated 19.6.1996 was sent to him to resume duty which was returned undelivered with the remarks that "he has left India". The management referred letter dated 10.3.1997 from which it is clear from the record that the workman was given notice dated 3.2.1997 by SRM Jalandhar in terms of clause 17(a) of the Vth Bipartite Settlement to report for duties within 30 days from the date of the notice but the workman did not join the duties. In the letter dated 10.3.1997 it is also mentioned that the workman is advised that he was absenting himself from duty consecutively for a period of more than 90 days without any information and the bank has reasons to believe that he has no intention of joining the bank duty. With this satisfaction the bank has observed that workman deemed to have voluntary retired from bank service with immediate effect *i.e.* *w.e.f.* 10.3.1997. Thus the bank has complied with all the formalities before treating the workman as voluntary retired from service It is also admitted fact that workman himself had given GPA in favour of his wife and letter to the

branch conveying that he has been voluntary retired from the bank service and his wife can operate all the account concerned to him. Therefore, it held that the workman rightly deemed to have retired from service voluntarily.

9. The workman cited 1993 SCR (3) 930 D.K. Yadav and J.M.A. Industries Ltd. and a judgment of the Hon'ble Supreme Court in the case of Uptron India Limited Vs. Shammi Bhan and another decided on 6.2.1998. I have gone through the case laws cited by the workman. The facts and circumstances of the case laws are quite different from the facts and circumstances of the case in hand hence the law principles laid down in the above case laws are not applicable to the case in hand.

10. As regard the claim of the workman for pension is concerned, the management in its written statement specifically submitted that the workman never approached the bank to process/sign the documents to avail the pensioner benefits. The workman should approach the bank and sign the documents to avail the pensioner benefits. As submitted by the management in report the workman was paid Rs. 79928.41 on account of Provident Fund, Gratuity of Rs. 68596/- less loan account settlement of Rs. 59077/-. The remaining amount of Rs. 89447.41 was credited to the account of the workman. As regard the claim of the workman for leave encashment is concerned, the workman is not entitled for the same in view of the provisions of the Bipartite Settlement dated 29.6.1990 as the workman was deemed to have voluntarily retired from the service of the bank.

11. In view of the discussions made, the deemed voluntary retirement from service of the workman is held to be in accordance with the provisions of the Bipartite Settlement. The workman has already been paid his dues after adjustment of the loan account.

12. For the purpose of pension workman to sign the documents for processing the sanction of his pension in accordance with the provisions of the Bipartite Settlement and bank rules.

13. The Industrial dispute is answered accordingly.

Chandigarh

07.09.2015

S.P. SINGH, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

कां० आं० 2012.—औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (11/2015) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं० एल-12011/88/2014-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2012.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the management of Indian Bank and their workmen, received by the Central Government on 15/11/2015.

[No. L-12011/88/2014-IR(B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 27th August, 2015

Present: K.P. Prasanna Kumari, Presiding Officer

Industrial Dispute No. 11/2015

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Management of Indian bank & Another and their workman)

BETWEEN

The General Secretary : 1st Party/Petitioner Union
Indian Bank Employees Union
17, Ameerjan Street, Choolaimedu
Chennai-600094

AND

1. The Deputy General Manager : 2nd Party/2nd
Indian Bank, HRM Department Respondent
No. 254-260, Avvai Shanmugam
Salai Royapettah
Chennai-600014
2. The Asstt. General Manager/ : 2nd Party/1st
Disc. Authority Respondent
Indian Bank, Zonal Office,
Dr. Besant Road
Kumbakonam

Appearance:

For the 1st Party/Petitioner Union : In Person
For the 2nd Party/1st and 2nd : M/s. Aiyar & Dolia
Management Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12011/88/2014-IR (B.II) dated 06/09.01.2015 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is:

“Whether the demand of the Indian Bank Employees Association (Tamilnadu), Chennai in modifying the punishment on Sri K. Selvaraju, Clerk/Shroff, Patteeswaram Branch, Indian Bank from "dismissal to compulsory retirement" from service is justified? What relief the concerned workman is entitled?”

2. On receipt of the Industrial Dispute this tribunal has numbered it as ID 11/2015 and issued notices to both sides. The petitioner has appeared in person and the Respondent through their counsel have filed their claim and counter statement respectively. The petitioner has filed rejoinder in reply to the Counter Statement.

3. The Averments in the claim Statement filed by the petitioner are as below:

Selvaraju, a member of the Petitioner Union who was working as clerk in the Patteeswaram Branch of the Indian Bank was charged with certain acts of omissions/commissions resulting in financial loss to the institution. A charge sheet was issued to him and domestic enquiry was conducted on these charges. Selvaraju appeared in person before the enquiry Officer without a Defence Representative and admitted all the charges against him. He also made good the financial loss suffered by the institution. He requested the management to inflict any punishment other than dismissal from service on him. However, the Disciplinary Authority imposed the capital punishment of dismissal without notice on him by order dated 13.02.2013. Selvaraju submitted appeal to the Appellate Authority seeking modification of punishment from that of dismissal without notice to compulsory retirement from service. However, the Appellate Authority confirmed the order of the Disciplinary Authority. The dispute is raised by the petitioner seeking modification of the punishment of dismissal without notice to compulsory retirement from service. An order may be passed modifying the punishment of dismissal without notice to compulsory retirement from service.

4. The Respondent has filed Counter Statement contending as follows:

Selvaraju, an employee of the Respondent Bank while working at Patteeswaram Branch was involved in certain acts of misconduct. He intentionally failed to account for certain cash remittances by the customers towards Jewel Loan Accounts involving an amount of Rs. 2,05,540/-. He had also stealthily removed 278 pieces of notes of Rs. of 500/-denomination and replaced 118 pieces of Rs.100/-denomination, the amount involved in this act being Rs.1,27,200/-.The employee was issued with a charge sheet dated 12.05.2012. In his reply dated 31.07.2012 he admitted having conducted the misconducts alleged against him. An enquiry was ordered and the employee admitted his guilt during the enquiry also. Based on the findings of the

Enquiry Officer, the Disciplinary Authority imposed the punishment of dismissal without notice on him. On appeal by the employee the punishment was confirmed by the Appellate Authority. The misconducts committed by Selvaraju are very grave in nature. He does not deserve any leniency. The fact that he made good the amounts involved does not absolve him from the charges and the gravity of the act. The persons employed in Public Financial Institutions such as the Respondent Bank have to act with utmost integrity. There is no justification in the demand of the petitioner to modify the punishment. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder reiterating his case in the Claim Statement. The evidence in the case consists of documents marked as Ext. W1 to Ext. W13 and Ext. M1. No oral evidence was adduced by either side.

6. The points for consideration are:

- (i) Whether the Respondent Bank is justified in imposing the punishment of dismissal without notice on the concerned employee?
- (ii) Whether the employee is entitled to have the punishment modified to Compulsory Retirement from service?"

The Points

7. Selvaraju was working in Patteeswaram Branch of the Respondent Bank as a Clerk. While so, Ext. W1-Charge sheet dated 12.05.2012 was issued to him. The first charge in the Charge Sheet refers to the details of 20 remittances made by the account holders to their accounts. The charge states that Selvaraju, the concerned employee had failed to account those remittances received by him as Single Window Operator and thus committed misappropriation of a total amount of Rs. 2,05,540/-. The second charge states that on 07.05.2012 he had clandestinely removed 278 pieces of Rs. 500 denomination and replaced 118 pieces of Rs. 100 denomination notes while he was handling the cash section. By Ext.W2-the reply dated 31.07.2012, Selvaraju admitted both charges alleged against him. He has stated in this that he has committed the acts of omission and commission mentioned in the charge sheet. He has further stated that the entire amount has been fully adjusted by obtaining loan.

8. An enquiry was conducted on the charges leveled against the petitioner even though he had admitted the charges by Ext.W2 letter given to the Disciplinary Authority. During the enquiry also Selvaraju admitted the charges unconditionally. The Enquiry Officer submitted report based on the admission and also the documents produced, finding him guilty. On the basis of the report of the Enquiry Officer the Disciplinary Authority passed Ext.W9 order on 13.02.2013 dismissing the employee without notice. He submitted appeal against the order and pleaded that the

punishment should be modified to compulsory retirement from service, but this was not accepted by the Appellate Authority. It is accordingly he has raised the dispute through the petitioner, the union of which he is a member.

9. The General Secretary of the Association has argued that it is a case where the concerned employee is entitled to leniency in the matter of punishment. It has been argued that the employee had worked in the Respondent's Institution for more than 26 years and so far he had worked without any blemish and no disciplinary action has been taken against him. It has also been argued by him that the employee had admitted the charge immediately after the charge memo was issued to him. without trying to contest the case.

10. Is it a case where the concerned employee is entitled to any leniency? I have referred to the charge memo issued to him in detail earlier, to bring out the nature of the commission/omission on his part. The employee has admitted the entire charges against him. The total amount misappropriated by him amounts to more than Rs. 3.00 lakhs. He has been trying to pilfer the remittances made by several account holders to their accounts. He also removed currencies of Rs. 500/- denomination and replaced a few of them with Rs. 100/- denomination to cover his misconduct. There is no doubt that the misconduct committed by the concerned employee was very grave in nature.

11. The counsel for the Respondent has referred to certain legal pronouncements of the Apex Court showing how such persons were dealt with. The decision reported in Janatha bazar (South Kanara Central Cooperative wholesale stores Ltd.) and others vs. Secretary, Sahakari Naukarana Sangam and others reported in 2007 SCC 517 is a case where the Labour Court had reinstated the workman in spite of specific finding of charges of breach of trust and misappropriation of goods. The Apex Court has held that once an act of misappropriation is proved, whether it be small or large amount there is no question of showing uncalled sympathy and reinstating the employee in service. The Apex Court has also held that in case of proved misappropriation there is no question of considering the past record. The order of reinstatement was set aside by the Apex Court. In the decision Regional Manager, Upsrtc, Etawah and others vs. Hotilal and others reported in 2003 2 LLJ 267, referring to previous decisions, the Apex Court has held that while dealing with the quantum of punishment, the Tribunal has to record reasons as to why it is felt that the punishment does not commensurate to the proved charges. It has further been held that the scope of interference in such cases is very limited and restricted to exceptional cases. The counsel has also referred to decision Suresh Patherella vs. Oriental Bank of Commerce reported in 2006 10 SCC 572. The Apex Court has observed in this that the bank's regulations require that every Officer of the bank at all times takes all possible steps to protect the

interests of the bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing unbecoming of a Bank Officer. The conduct of the employee in the present case was totally against this observation. Excuses of any kind in the matter of misappropriating public funds could not be accepted. That the amount has been subsequently made good also is not an excuse for giving punishment which will undermine the gravity of the alleged act.

12. In the decision in Rajasthan State Road Transport Corporation and another vs. Bajrang Lal reported in 2014 4 SCC 693, the Apex Court has quoted with approval an earlier decision where it was held that in case involving corruption there cannot be any other punishment than dismissal and any sympathy shown in such cases is totally uncalled for and opposed to public interest, that the amount misappropriated may be small or large but is the act of misappropriation that is relevant. In the decision Diwan Singh vs. Life Insurance Corporation Of India and others reported in 2015 2 scc 341 also the same decision was quoted with approval and punishment given to the employee was upheld.

13. The misconduct on the part of the employee is a very grave one. The punishment imposed on him commensurate with gravity of the misconduct. No other punishment other than dismissal from service could be thought of in the circumstances. So the petitioner is not entitled to any relief. The reference is answered against the petitioner.

An award is passed accordingly.

K.P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/Petitioner Union	:	None
For the 2nd Party/1st and 2nd Management	:	None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ext.W1	12.05.2012	Charge Sheet to K. Selvaraju ZOK/VIG/51257/2012-13
Ext.W2	31.07.2012	Reply to the above charge sheet by Sri K. Selvaraju
Ext.W3	31.07.2012	Domestic enquiry proceedings
Ext.W4	11.08.2012	Presenting Officer's brief
Ext.W5	20.09.2012	Enquiry Officer's findings
Ext.W6	20.09.2012	Defence brief
Ext.W7	29.11.2012	Letter from Sri K. Selvaraju to the Disciplinary Authority

Ext.W8	11.02.2013	Letter from Sri K. Selvaraju to the Disciplinary Authority seeking reduction in proposed punishment
Ext.W9	13.02.2013	Orders of the Disciplinary Authority "Be Dismissed without Notice"
Ext.W10	27.05.2013	Proceedings of the personal hearing before the Appellate Authority
Ext.W11	27.05.2013	Appeal letter from Sri K. Selvaraju to the Appellate Authority for reduction of punishment
Ext.W12	06.06.2013	Orders of the Appellate Authority
Ext.W13	19.08.2013	Letter IBEA/GEN/257/2010-13 from the Union to the ALC, Puducheri raising an Industrial Dispute

On the Management's side

Ex.No.	Date	Description
Ex.M1	10.04.2002	Memorandum of Settlement

नई दिल्ली, 15 अक्टूबर, 2015

का० आ० 2013.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार युको बैंक के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, धनबाद के पंचाट (03/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं० एल-12012/66/2012-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2013.— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 03/2013) of the *Cent. Govt. Indus. Tribunal-cum-Labour Court, No. 1*, Dhanbad as shown in the Annexure, in the industrial dispute between the management of UCO Bank, and their workmen, received by the Central Government on 15/10/2015.

[No. L-12012/66/2012-IR (B-II)]
RAVIKUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/s 10(1) (d) (2A)
of I.D. Act. 1947.

Reference No. 03 of 2013

Employer in relation to the management of UCO Bank,
Zonal Office

And

Their workman.

Present:- Sri R.K. Saran, Presiding Officer.

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri M.K. Sinha, Advocate

State: Jharkhand. Industry:— Banking

Dated 8/9/2015

AWARD.

By order No.-L-12012/66/2012 IR (B-II), dated. 11/01/2013, the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section (2A) of Section 10 of the Industrial Disputes Act. 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the management of UCO Bank has obtained the service of the workman on regular basis for the period between 2006 to 2011 and if so whether the action of the management of UCO Bank in terminating the service of Shri Promod Kumar *w.e.f.* 19.02.2011 is legal and justified? What relief the disputant workman is entitled to?"

2. The case is received from the Ministry of Labour on 12.02.2013. After receipt of reference, both parties are noticed. The Workman files their written statement on 04.03.2013. And the management files their written statement-cum-rejoinder on 16.01.2014. Only one witness *i.e.* workman himself examined as WW-1. But no witness examined on behalf of the management. Document of workman marked as M-1 to M-4.

3. The case of the workman is that the concerned workman was appointed on the post of computer Operator on daily wages in Jaipur Branch on Rs. 100/- per day on verbal instruction of I.D.M Banka on 27.01.2006. Payment of daily wages was paid to this workman by end of week by Branch Manager through voucher as daily wages for the entire period *i.e.* 27.01.2006 to 19.02.2011. During the service the worked different jobs as Accounts Clerk, Cashier etc. and in the way the workman concerned rendered his services to the Bank for more than 240 days continuously for five years. In spite of this continuous services for more than 5 years the workman concerned was verbally terminated from service on 19.02.2011 without giving any previous notice which is mandatory requirement U/s 25 F 0 I.D Act which is utter violation of the Act Hence he was entitled to be regularised on his service.

4. Management's case is that Shri Pramod Kumar Mishra was engaged time to time as an out sourcer for helping in extra work of Branch. The Branch has paid as per his work purely on daily basis only in extreme exigencies for non Banking work. The concerned workman left working from 09.02.11 willfully as the Bank did not agree to pay as per his demand. Therefore he was not the employee of the Bank, question of termination of his service does not arise. It is relevant to mentioned that the Branch Manager of the Bank is authorized to appoint any person in sanctioned or unsanctioned post.

5. Workman has filed four items of document as per list which is marked as Exhibits *i.e.* letter of Branch Manager to AGM dtd. 27.01.2006 marked as Ext-W-1(2) Letter of the manater to L.D.M. Banka dtd. 17/05/06 marked as Ext. W-2(3) Certificate issued by the Branch Manager to the concerned workman dtd. 20.01.2010 marked as Ext. W-3 (4) Vouchers of 27.01.2006 to 19.02.11 in which payment made to the workman marked as Ex-4 Series.

6. The workman as casual employee was working in the UCO Bank from 2006 to 2011 as Computer Assistant. Which working in that capacity. He claims regularisation, for which bank management terminated his service.

7. The matter is finally referred to this Tribunal. After hearing it is settled and decided that the bank management to take the workman at once as casual employee. It is also pertinent here to mention that the workman files voluminous documents that bank paid the workman wages and even acknowledge him casual computer assistant.

8. Considering the facts and circumstanes that take the workman as casual employee on prevalent wages, management is directed to comply this award within a month from the date of publication of award.

This is my award.

R.K. SARAN, Presiding Officer

नई दिल्ली, 15 अक्टूबर, 2015

का. आ. 2014—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, लखनऊ के पंचाट (108/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं एल-12013/95/98-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2014— In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 108/2000) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as

shown in the Annexure, in the industrial dispute between the management of Union Bank of India, and their workmen, received by the Central Government on 15/10/2015.

[No. L-22013/95/98-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL- CUM-LABOUR COURT, LUCKNOW

PRESENT

Rakesh Kumar, Presiding Officer

I.D. No. 108/2000

Ref. No. L-12013/95/98-IR (B-II) dated 30.03.1999

BETWEEN

The State Vice President
Union Bank Staff Association
3/192, Viram Khand
Gomti Nagar,
Lucknow (U.P.)

AND

The General Manager
Union Bank of India,
Zonal Office, Sharda Tower, IIInd floor,
Kapoorthala Complex, Aliganj
Lucknow (U.P.)

AWARD

1. By Order No. L-22013/95/98-IR (B-II) dated 30.03.1999 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the State Vice President, Union Bank Staff Association, Lucknow and General Manager, Union Bank of India, Zonal Office, Kapoorthala Complex, Aliganj, Lucknow for adjudication.

2. The reference under adjudication is:

"Whether the action of the Management of Union Bank of India in imposing punishment of stoppage of two increment with cumulative effect upon Sh. Om Prakash Agarwal is legal and justified? if not, what relief the workman is entitled to?"

3. The order of reference was endorsed to the State Vice President, Union Bank Staff Association, Lucknow with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a

copy of such a statement to each one of the opposite parties involved in this dispute under Rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. Initially the reference order was received at CGIT-cum-Labour Court, Kanpur, and which was registered as I.D. No. 70/99. Subsequently on transfer from CGIT, Kanpur to this court, the case was received here on 27.09.2000 and was registered as I.D. No. 108/2000.

5. As per the claim statement, the bank association has asserted in brief, the details of the association, management and service conditions etc. of the workman. It has been pleaded that Sri Om Prakash Agarwal was posted as Clerk-cum-Cashier at Varanasi-Sonarpura Branch of the bank later on promoted to Clerk, and he is covered under the definition of the workman under Section 2(s) of the I.D. Act. Giving reference to the direction of the Reserve Bank of India, the procedure of handling cash and keeping in safe custody, has also been mentioned in the claim statement. It has been stated in the claim statement that the workman while his earlier posting at Rathyatra ING Branch of the bank, he had worked on cash receipt counter also, and the cash balance was always handed over to the Head Cashier of the branch at the close of business hour after tallying the same, and no shortage deficiency was ever detected during the course of counting and recounting at currency chest.

6. It has further been stated that some mischief was going on in the Currency Chest and during April/May 1993, huge cash shortage worth lacs of rupees was detected. The workman was suddenly called upon on 20.05.1993 to make good the shortage of Rs. 6,600/- out of total shortage of cash detected in the currency chest. Since the workman was not responsible for the shortage, he refused to make good the shortage of Rs. 6,600/- out of lacs of rupees. In order to coerce the workman, the management of Bank issued a charge sheet dated 26.04.1994 but without advancing the proceedings, on 12.01.1996, the workman was further served with a supplementary charge sheet dated 29.06.1995, in which the alleged shortage on the part of the workman was stated to the tune of Rs. 10,000/-.

7. On 12.01.1994 Union raised industrial dispute over the said unfair labour practice adopted before the ALC (C), Lucknow but during the process the committee constituted did not submit any report. It has been alleged by the association that in complete disregard to the principle of natural justice, punishment of stoppage of 2 annual increments with cumulative effect was inflicted and order was served in July 1996, and an appeal was preferred, its outcome was not communicated to the workman, later on the I.D. was raised before RLC (C) Kanpur, conciliation proceedings were transferred to ALC (C), Lucknow failure of conciliation report was sent to Govt. of India later on the matter was referred to CGIT, Lucknow.

8. The workman has alleged that many other employees who were similarly charge sheeted, were inflicted with the

punishment "WARNING" only while the workman was given severe punishment. It has also been mentioned that the relevant provision of Bipartite Settlement dated 31.10.1979, 19.10.1966 etc. were also not duly followed by the management. The workman has also challenged the appointment of Enquiry Officer/Disciplinary Authority and Appellate Authority. The association has also alleged that the relevant provision of the I.D. Act, have been violated by the management.

9. The workman has also asserted that the defence was not provided during the enquiry fair opportunity to cross examine the management's witness on relevant point, same principle was not followed during the cross-examination of defence witness, findings of the enquiry officer were perverse and unreasoned, the alleged misconduct was not proved at all. It has also been emphasized by the workman that the service conditions do not permit the stoppage of more than one increment as per language of 19.6 (D) of Bipartite Settlement dated 19.10.1966. The association has prayed to set aside the charge sheet, enquiry proceedings, findings and the order of punishment and the order of Appellate Authority, exonerating the workman from charges levelled, with all consequential benefits.

10. The management while refuting the averments taken by the workman, has filed written statement (page No. 7). The management has submitted that the reference made by the government is bad in law, the matter is not covered under the definition of Industrial Dispute, the alleged act is purely of managerial and administrative function. The workman was provided with the charge sheet containing therein his acts, omission and commission, constituting gross misconduct and gross negligence resulting monetary loss to the bank. Thorough enquiry was conducted as per rules, opportunity for hearing was also provided, the disciplinary authority imposed the punishment of stoppage of 2 increments with cumulative effect, appeal filed by the workman was also dismissed. The opposite party has further stated that since the TR slips were signed by the CSE, subsequently during checking the shortage were detected therefore the CSE(workman) was held responsible for such shortages. *Prima-facie* the workman was found to have committed irregularities in discharging the duties as receiving Cashier and the bank had to make good the loss made to public. The management has emphasized that fair and reasonable opportunity to defend his case was provided to the workman, there was no violation of any provision of Bipartite Settlement whatsoever. The opposite party while citing the principle laid down by Hon'ble Supreme Court in Inspector General of Police Vs. Thavasiappan (1) 1996 (2) SLC (SC) 470, has stressed that there is no lack of inherent jurisdiction to the Dy. Manager (P) Regional Office to hold the enquiry and the General Manager disposed off the appeal. The opposite party has also asserted that section 33 of the ID Act does not apply in the present matter. Another Ruling viz. Indian Bank Ltd.

Vs. S.M. Ramanathan 1967 II LLJ 31 has also been cited by the opposite party. The management has requested to dismiss the claim statement and to confirm punishment awarded by the management.

11. Later on rejoinder (paper No. 4) was also filed by the workman reiterating the pleas taken in the claim statement and strong denial of the written statement.

12. Along with list dated 29.01.2001 several documents have been filed by the workman inclusive of enquiry report etc. The management with its list dt. 29.01.2001 has also filed the findings of the enquiry report and other documents. The workman has filed the affidavit and was duly cross examined by the management. The management has also filed affidavit of 4 witness and they were cross examined by the workman.

13. Preliminary issues regarding the said fairness and perversity of the domestic enquiry were decided by the then Hon'ble Presiding Officer on 16.01.2002, against the management. An opportunity was provided to the management to prove charges a fresh before this Tribunal.

14. The management of the Union Bank of India adduced evidences of Shri R.C. Pandey, Inquiry Officer, Sri Hare Krishna Nagar, Sri Jai Ram Nagar, Sri Neeraj Rastogi, Branch Manager, Sri Vijay Vyas in support of charge sheet; whereas the workman examined himself in support of his case. The parties availed opportunity to cross-examine the witnesses of each other. Apart from submitting their written submissions, the management stopped attending the proceedings since long; moreover it did not turn up in spite of notices for submission of oral arguments. However, the authorized representative of the workman forwarded his oral arguments.

15. Heard the learned authorized representative of the workman's union and perused the evidence available on record.

16. Having given thoughtful consideration to the submissions of the Union and written submissions of the management of Union Bank of India, it comes out that in the instant case the workman whose cause has been espoused in the present industrial dispute was posted as Clerk-cum-Cashier at Sonarpura branch of Varanasi; but earlier to it, he was posted at Rathyatra crossing branch at few occasions and worked on cash receipt counter. During that he used to hand over cash balances to the Head Cashier of the branch at the close of business hours, after tallying the cash; such balances were received by the Head Cashier. During his tenure with the said branch, no shortage was ever detected, the cash handed over by him to the Head Cashier were remitted to the currency chest along with other cash received at the branch. No shortage/deficiency was informed to him during the course of counting/recounting at the relevant time. It was during April/May 1993, huge cash shortage worth lacs of rupees was detected

and the management of the bank instead of unearthing the mischief adopted a convenient device to recover the cash calculated on whimsical basis and to punish those who failed to obey such arbitrary orders.

17. The management witness, Sri Vijay Vyas in his cross-examination stated that “जून 1993 में मैं बनारस में कार्मिक अधिकारी के पद पर सहायक महाप्रबंधक कार्यालय वाराणसी नियुक्त हुआ था। उसके पहले से करेंसी चेस्ट में बार-बार नकदी में कमी पाई जा रही थी। मेरी नियुक्ति के बाद भी नकदी में कमी पाई जाती रही। मैं यह अनुमान से भी नहीं बता सकता कि कितनी राशि कि कमी पाई गई थी। नकदी की बाकी कर्मचारियों से पूरी कराई गई। ओपी० अग्रवाल के अलावा किसी अन्य कर्मचारी के विरुद्ध अनुशासनिक कार्यवाही नहीं की गई। क्योंकि उन्होंने नकदी की कमी पूरी कर दी थी।” This goes to show that the shortage in currency notes was found well before June, 1993; but the management of the Bank instead of sorting out the actual problem and catch the real culprit or to evolve such a system so as to check this problem, adopted a practice to recover the money illegally from the persons who were dealing with currency notes in any way by coercing/ threatening them with disciplinary action. From above statement of the management witness, given during the cross-examination, goes to show that the workman was charge-sheeted and held guilty; and resultantly punished just due to the fact that he refused to contribute to the illegal recover, probably for the reasons he was not responsible for alleged shortage. Sparing those who submitted to the illegal practice of the management and punishing those who resisted, is unacceptable and liable to be turned down, as it is against the established principles of natural justice as well.

18. Further the statement of the management witness, Sri H.K. Nagar, during cross-examination is worthwhile, which follows as under:

“ जब करेंसी नोट्स स्टेट बैंक या रिजर्व बैंक जाते थे और जब बंडल में नोट कम निकलते थे, तो बंडल के ऊपर लेबल में कैशियर के विवरण से नोट की कमी पूरी कर ली जाती थी।

कैशियर तो हैंड-कैशियर को देगा ही। शाखाओं में री काउंटिंग नहीं होती क्योंकि ऐसा सिस्टम नहीं है। चेस्ट पर आने पर हर बंडल के नोटों की गिनती व छानबीन नहीं की जाती है कि नोट कम हैं कि ज्यादा। सरसरी तौर पर लेबल व बंडल देख लिए जाते हैं और उसे करेंसी चेस्ट में रख दिया जाता है।

कमी पाये जाने पर जिस ब्रांच की कमी निकलती है। रथयाथा ब्रांच से पूरी कर लेते थे। और उसके बाद संबंधित कैशियर को वह कमी दिखाकर पूरी कर लेते हैं।”

The workman was Clerk-cum-Cashier at the time of occurrence of incident; as per procedure the cashier used to hand over the cash to Head Cashier and thereafter the cash was sent to the Currency Chest, without recounting at the end of Head Cashier. However, if there was any deficiency found at Currency Chest the same was recovered

from the cashier concerned of the branch. From statement of the management witness, it is evident that there was no system of recounting at the end of Head Cashier when he received the money from cashier; and this money so received was transmitted to the Currency Chest without counting. However, the shortage found, if any, was recovered from the cashier concerned without any justification. It is noteworthy to mention here that when there was no recounting by the Head Cashier then how the Cashier alone can be held responsible for such shortage in currency notes. Also, the system prevalent at the relevant period of time *i.e.* not counting of the currency note received by the Head Cashier was also faulty. Had there had been a system of recounting at the level of Head Cashier then the shortage might have been detected at the level of Head Cashier and the Cashier in that case might have been held solely responsible for that. But in the absence of such system of recounting at the end of Head Cashier, the Cashier alone cannot be held guilty or made subject to recovery or disciplinary action.

19. Thus, from the facts and circumstances of the case and the case laws cited hereinabove, I am of considered opinion that the action of the management of Union Bank of India in imposing the punishment of stoppage of two increments with cumulative effect upon the workman is illegal and unjustified. Accordingly, I come to the conclusion that the workman, Om Prakash Agarwal is entitled for release of two increments, with consequential benefits. The sum due shall be paid to the workman by the management within two months from the date of notification of this "award."

20. The reference under adjudication is answered accordingly.

21. Award as above.

LACKNOW, RAKESH KUMAR, Presiding Officer
13th August, 2015.

नई दिल्ली, 15 अक्टूबर, 2015

कांआ 2015.— औद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार सेंट्रल बैंक ऑफ इंडिया के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 14/2002) को प्रकाशित करती है जो केन्द्रीय सरकार को 15/10/2015 को प्राप्त हुआ था।

[सं एल-12012/24/2002-आई आर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 15th October, 2015

S.O. 2015.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. 14/2002) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kolkata as shown

in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 15/10/2015.

[No. L-12012/24/2002-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 14 of 2002

Parties: Employers in relation to the management of
Central Bank of India

AND

Their workmen

Present: Justice Dipak Saha Ray,
..... Presiding Officer

Appearance:

On behalf of the : Mr. G. C. Chakraborty, Ld.
Management Counsel.

On behalf of the : Mr. N.G. Mondal, Ld. Counsel.
Workmen

State: West Bengal. Industry: Banking

Dated 24th August, 2015.

AWARD

By order No. L-12012/24/2002-IR(B-II) dated 30.05.2002 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

"Whether the action of the management of the Regional Manager, Central Bank of India, Regional Office, Bangchatra Road, P.O. and Dist.—Cooch Behar in terminating the services of Shri Kajal Ch. Das *w.e.f.* 14.10.1999 is just and fair? If not, what relief is the concerned workman entitled to?"

2. The case of the concerned workman is, in short, as follows:

He was appointed by the management of the Bank in June, 1993 for making entries of the deposits received under Mini Deposit Scheme and accordingly since then he had been performing his said duties continuously and uninterruptedly till 13th October, 1999. On 14.10.1997 while he was posted as Clerk at Haldibari Branch of the Bank, his service was terminated without giving any reason whatsoever. It is alleged that he was illegally terminated. Accordingly an industrial dispute was raised by the workman. Hence this reference.

3. The management has opposed the case of the workman by filing written statement contending *inter alia* that the concerned workman was never appointed as Clerk. He was engaged by the Bank as Coolie to do jobs as and when his service was required and was paid for the same through vouchers. It is the contention of the management that the concerned workman had not to work every day; on the contrary he was engaged by the Bank when his service was required. The management has, accordingly, prayed that the instant reference may be answered in the affirmative.

4. The concerned workman, in support of his case has examined himself as WW-01 and proved six documents which have been marked Exhibits W-01 to W-06. Similarly, the management has examined one witness, namely, Ashim Dasgupta as MW-01 and proved six documents marked Exhibits M-01 to M-06.

5. It is argued on behalf of the concerned workman that in June, 1993 he started working as Clerk in the Central Bank of India, Haldibari Branch at the instance of the then Manager of that Branch namely Mishraji and worked as such uninterruptedly till 13th October, 1999 with an oral assurance of the branch administration that he would be absorbed and/or regularized whenever vacancy was reported. It is further argued that during the said period of his service he used to make entries of the deposits received under Mini Deposit Scheme and for his such job bank used to pay him through vouchers. Such payment was made from the Bank's account.

6. On the other hand it is argued on behalf of the management that the concerned workman was engaged as Coolie and that too not on regular basis. He was occasionally engaged when his service was so required. It is further argued that the workman was paid through vouchers for his job as Coolie.

7. It is well known that at the relevant point of time the clerical staffs of the banks were recruited through Banking Service Recruitment Board. Here, it is not the case or the workman that he was recruited through the Banking Service Recruitment Board. It is also not the case of the workman that after observing the formalities of recruitment, bank authority recruited the workman as dealing assistant or to any other post.

8. Now on perusal of the oral evidence of the concerned workman (WW-01) which corroborates the document marked Ext. W-02 it is evident that no appointment letter was issued to the workman by the Bank authority. One Mishraji, the then Branch Manager, appointed him. During cross-examination the witness admitted that he never put his signature on the attendance register and that he used to receive coolie charge.

9. It is also surprising to note that the workman did not make any attempt to examine the said Mishraji to establish

that he was so engaged to do the job of a Clerk and his monthly remuneration was Rs. 200/- and that the said Mishraji had such power to engage any person to do the work of a Clerk in a nationalized bank. Non-examination of the said Mishraji would lead to an adverse presumption that had the said Mishraji been examined, he would not have supported the case of the workman.

10. In this case the workman has claimed that he worked uninterruptedly as a Clerk for seven years; but he has failed to produce any document to substantiate his contention. Admittedly the workman never signed the attendance register during the alleged period of his service.

11. Now from the documents *viz.* vouchers (marked Ext. M-06 collectively) filed on behalf of the management it appears that the workman used to receive labour charges on daily rate basis for doing specific job as and when his service was required. These vouchers do not go to show that the workman used to receive monthly wages and that he was in continuous service as per the provisions of Section 25B of the Industrial Disputes Act, 1947.

12. In view of the above facts and circumstances and since the workman has failed to prove that he was in continuous service as per the provisions of Section 25B of the Act the management had no obligation to comply with the provisions of Section 25F of the Act at the time of termination of the workman from the service and as such it appears that the termination of the workman who worked as Coolie/labour was just and fair.

13. It is apt to mention here that the pleadings of the parties and the evidence on record, both oral and documentary, go to show that no formalities as per rules were observed in engaging the concerned workman to work as Coolie. He was so engaged on local arrangement. The record also does not go to show that there was/is any permanent post of Coolie in the concerned branch of the bank.

14. From the above discussion it appears that the workman worked from June, 1993 to 13th October, 1999 in the Bank as a daily rated worker and had not to work every day and his such appointment was not like that of a regular sub-staff of the Bank. He was engaged by the then Branch Manager to do the job of a coolie on daily rate basis for which he was also paid by the Bank through vouchers.

15. Now from the decision of the Hon'ble Supreme Court reported in (2006) 4 SCC 1, (Secretary, State of Karnataka & Others Vs.. Umadevi and others) it appears that:

"34. Thus, it is clear that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding a violation of Article 14 or in ordering the over looking of the need to comply with the requirements of

Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at

the instance of temporary employees whose period of employment has come to an end or of an ad hoc employees who by the very nature of their appointment, do not acquire any right."

16. Considering the facts and circumstances and the discussion made above and in view of the above decision of the Hon'ble Supreme Court it appears that the concerned workman is not entitled to get any relief of reinstatement as claimed by him even if termination of his service is found to be illegal and unjustified.

17. Having regard to the facts and circumstances and the above discussion, the instant reference is answered in the affirmative and the concerned workman is not entitled to get any relief.

18. This reference is disposed of accordingly.

JUSTICE DIPAK SAHA RAY, Presiding Officer

Dated, Kolkata,
The 24th August, 2015